Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No. 212

HENRY FORD, GEORGE HARRIS, J. EVELETH, ET AL., PETITIONERS,

vs.

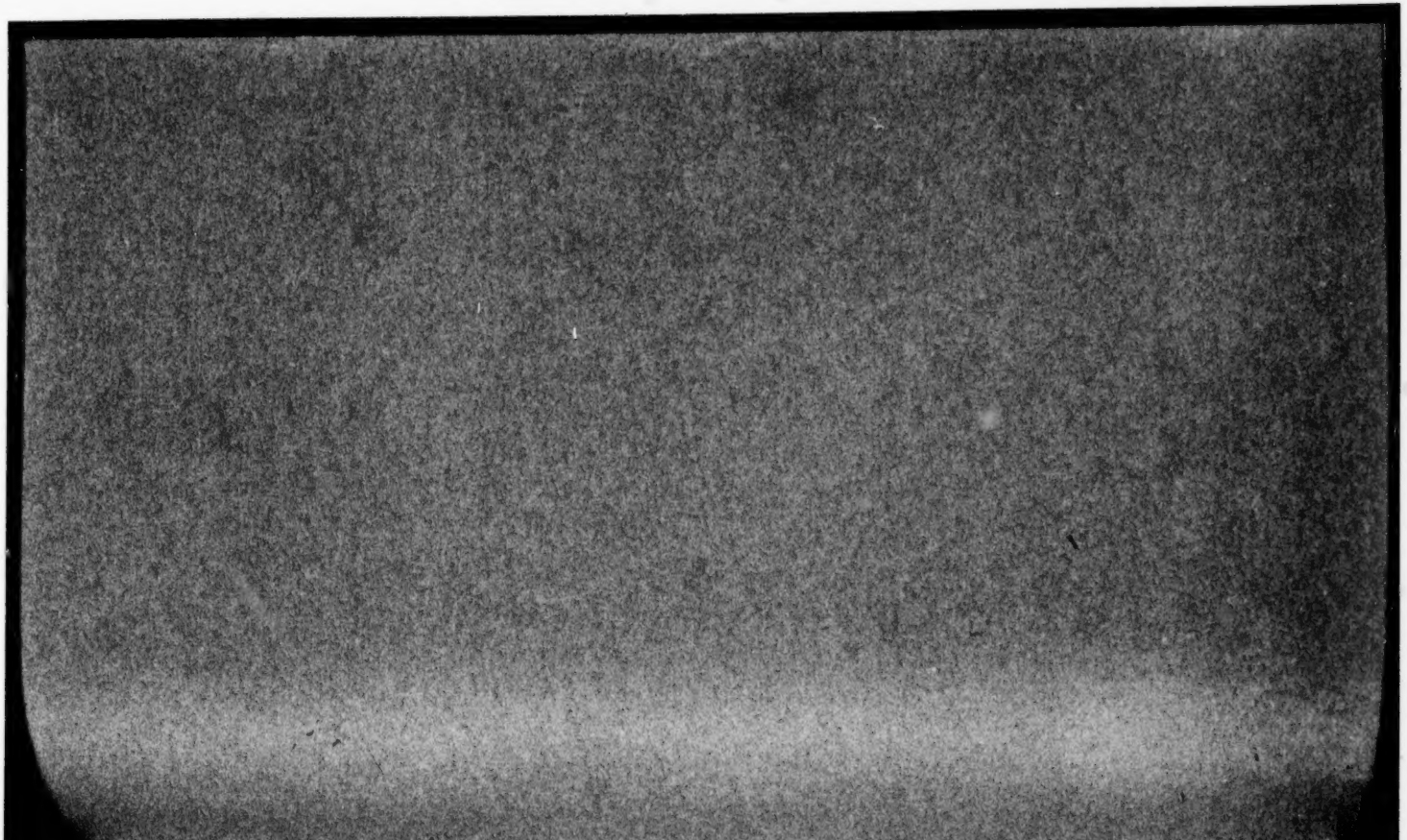
THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 31, 1936

CERTIORARI GRANTED APRIL 20, 1936

(21,733)



(31,768)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

No. 312

GEORGE FORD, GEORGE HARRIS, J. EVELYN, ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

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NAMES OF ATTORNEYS OF RECORD.

For Defendants and Plaintiffs in Error:

KENNETH M. GREEN, Esq., HAROLD C. FAULKNER, Esq., JAMES B. O'CONNOR, Esq., and NATHAN C. COGHLAN, Esq., San Francisco, California.

For Plaintiff and Defendant in Error:

UNITED STATES ATTORNEY, San Francisco.

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEO. FORD, GEORGE HARRIS, J. EVELYN, VINCENT QUARTARARO and C. H. BELLANGER,

Defendants.

PRAECIPE FOR A TRANSCRIPT OF RECORD OF WRITS OF ERROR.

To the Clerk of Said Court:

Sir:

Please prepare certified transcript on writs of error of Geo. Ford, George Harris and J. Evelyn and

Vincent Quartararo and C. H. Bellanger, of the following pleadings, papers and orders:

1. Indictment.
2. Verdict of jury.
3. Motion for a new trial of George Ford, George Harris and J. Evelyn.
4. Motion for a new trial of Vincent Quartararo.
5. Motion for a new trial of C. H. Bellanger.
6. Motion in arrest of judgment of George Ford, George Harris and J. Evelyn.
7. Motion in arrest of judgment of Vincent Quartararo.
8. Motion in arrest of judgment of C. H. Bellanger.
9. Sentence and judgment.
10. Bill of exceptions as settled by trial Judge.
11. Petition for writ of error of:
    - (a) George Ford, George Harris and J. Evelyn,
    - (b) Vincent Quartararo.
    - (c) C. H. Bellanger.
12. Order allowing writ of error of:
    - (a) George Ford, George Harris and J. Evelyn.
    - (b) Vincent Quartararo.
    - (c) C. H. Bellanger.
13. Assignment of errors.
14. Bonds of costs of:
    - (a) George Ford, (b) George Harris, (c) J. Evelyn.

(d) Vincent Quartararo, (e) C. H. Bellanger,

15. Supersedeas of: [1*]
    (a) George Ford, (b) George Harris, (c) J. Evelyn,
    (d) Vincent Quartararo, (e) C. H. Bellanger.
16. Writ of error of:
    (a) George Ford, George Harris and J. Evelyn.
    (b) Vincent Quartararo.
    (c) C. H. Bellanger.
17. Citation on writ of error of:
    (a) George Ford, George Harris and J. Evelyn.
    (b) Vincent Quartararo.
    (c) C. H. Bellanger.
18. Praecipe for certified transcript.
19. Motion to quash indictment on behalf of defendants, George Ford, George Harris, J. Evelyn, Vincent Quartararo and C. H. Bellanger.
20. Demurrer on behalf of defendants, George Ford, George Harris, J. Evelyn, Vincent Quartararo and C. H. Bellanger.
21. Motion to exclude evidence.
22. Order overruling motion to exclude evidence.
23. Opinion of trial Judge on motion to exclude evidence.
24. Affidavit of C. Howell on motion to exclude evidence.

*Page-number appearing at foot of page of original certified Transcript of Record.

25. Order that one engrossed bill of exceptions may be used on each separate writ of error.
26. Order for transfer of original exhibits.
27. Stipulations and orders extending time to engross and settle bill of exceptions, and amendments thereto.
28. Stipulations and orders enlarging the return day on writ of error and citation on writ of error.
29. Order of Court overruling the demurrer, denying motion to quash indictment and motion to suppress evidence.
30. Stipulation and order that one bill of exceptions and one assignment of errors may serve on behalf of all defendants.

Dated: May 19th, 1925.

KENNETH M. GREEN,
NATHAN C. COGHLAN,
HAROLD C. FAULKNER,
JAMES B. O'CONNOR,
Attorneys for Defendants.

[Endorsed]: Filed May 21, 1925. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [2]

(INDICTMENT.)

In the Southern Division of the United States District Court for the Northern District of California, First Division.

At a stated term of said court begun and holden in the city and county of San Francisco within and for the Southern Division of the Northern District of California, on the first Monday of November, in the year of our Lord one thousand nine hundred and twenty-four.

The Grand Jurors of the United States of America, within and for the Southern Division of the Northern District of California duly impaneled in and for the term of said court begun and holden on the second Monday in July in the year one thousand nine hundred and twenty-four, and duly and regularly continued in session by order of court made and entered in the premises prior to the expiration of said July term of court, for the purpose of considering this and other cases, do on their oaths allege, find, charge and present:

I.

That heretofore, to wit, on the 28th day of October, 1919, the Congress of the United States of America passed an Act entitled: "An Act to prohibit intoxicating beverages and to regulate the manufacture, production, use and sale of high proof spirits for other than beverage purposes, and to insure an ample supply of alcohol and promote its use in scientific research and in the develop-

ment of fuel, dye and other lawful industries," the short title of which Act is "National Prohibition Act," and which said Act at all of the times hereinafter mentioned was and is now in full force and effect. [3]

II.

That heretofore, to wit, on the 21st day of September, 1922, the Congress of the United States of America passed an Act entiled, "an Act to provide revenue to regulate commerce with foreign countries, to encourage the industries of the United States, and for other purposes," the short title of which Act is "Tariff Act of 1922," and which said act at all of the times hereinafter mentioned was and is now in full force and effect.

III.

That heretofore, to wit, on the 22d day of May, 1924, the countries of Great Britain and the United States of America entered into ratified and exchanged ratifications of a convention, agreement and treaty for the prevention of smuggling of intoxicating liquors into the United States and which said convention, agreement and treaty at all the times herein mentioned was and is now in full force and effect.

IV.

That by, under and pursuant to the provisions of said National Prohibition Act, and particularly by Section 3 of Title II thereof, it is provided:

"No person shall on or after the date when the Eighteenth Amendment to the Constitution of the United States goes into effect, manufacture, sell,

barter, transport, import, export, deliver, furnish or possess any intoxicating liquor except as authorized in this Act, and all the provisions of this Act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented."

V.

That by, under and pursuant to the provisions of said Tariff Act of 1922, and particularly by Section 593, [4] Subdivision (b) thereof, it is provided:

"If any person fraudulently or knowingly imports or brings into the United States, or assists in so doing, any merchandise, contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported or brought into the United States contrary to law, such merchandise shall be forfeited and the offender shall be fined in any sum not exceeding $5,000 nor less than $50, or be imprisoned for any time not exceeding two years, or both. Whenever, on trial for a violation of this section, the defendant is shown to have or to have had possession of such goods, such possession shall be deemed evidence sufficient to authorize conviction, unless the defendant shall explain the possession to the satisfaction of the jury."

VI.

That by, under and pursuant to the provisions of said convention, agreement and treaty between

the United States and Great Britain, and particularly Article II thereof, it is provided:

"(1) His Britannic Majesty agrees that he will raise no objection to the boarding of private vessels under the British Flag outside the limits of territorial waters by the authorities of the United States, its territories or possessions in order that enquiries may be addressed to those on board and an examination be made of the ship's papers for the purpose of ascertaining whether the vessel or those on board are endeavoring to import or have imported alcoholic beverages into the United States, its territories or possessions in violation of the laws there in force. [5] When such enquiries and examination show a reasonable ground for suspicion, a search of the vessel may be instituted.

(2) If there is reasonable cause for belief that the vessel has committed or is committing or attempting to commit an offense against the laws of the United States, its territories or possessions prohibiting the importation of alcoholic beverages, the vessel may be seized and taken into a port of the United States, its territories or possessions, for adjudication in accordance with such laws.

(3) The rights conferred by this article shall not be exercised at a greater distance from the coast of the United States, its territories or possessions than can be traversed in one hour by the vessel suspected of endeavoring to commit the offense. In cases, however, in which the liquor is intended to be conveyed to the United States, its territories or possessions by a vessel other than

the one boarded and searched, it shall be the speed of such other vessel and not the speed of the vessel boarded which shall determine the distance from the coast at which the right under this article can be exercised."

VII.

That during all of the times herein mentioned Farallone Islands were and now are owned and possessed by the United States; that said Farallone Islands are located at a point in the Pacific Ocean approximately due west of the city and county of San Francisco, State of California, United States of America, and at a distance approximately twenty-five miles from the said city and county of San Francisco. [6]

VII.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further allege, charge, find and present: THAT

GEO. FORD
F. W. TAYLOR
F. McLEOD
J. Y. PHILLIPS
W. HASTIE
R. GARDINER
CARL NEILSEN
JOHN V. LLOYD
RUSSEL WHITELAW
GEORGE WILLIAM MORGAN
JAMES HUNTER
NATHAN BELL
ISIDORE JACK KLEIN

JOSEPH BROOKS
DAVID SANFORD
MARK ROGERS
THEODORE GOLDBOOM
ALBERT LOFTUS McLELLAN
VINCENT QUARTARARO
MAURICE DEHEON
GEO. HARRIS
J. McQUEEN
R. GISBORNE
G. WINTERBURN
B. JAMES
J. McLENNAN
EMILIO PENSOTTI
MARINO CRIVELLO
GEORGE GARDINER
WILLIAM JOHN LEVIN
CHARLES HORACE BELANGER
DAVID ZIMMERMAN
FRANK WEBSTER
J. EVELYN
H. McVEY
R. C. SHIELS
A. CAVANAUGH
J. McLENNAND
J. McCLUSKIE
ROBERT DUNCAN
SAMUEL BRONFMAN
ROBERT FIDDES
OILER BESNER
WILLIAM NATHAN ZIMMERMAN
F. R. ANDERSON

SALVADORE CRIVELLO
R. BRUCE
C. GRANT
J. H. MASON
E. SARGENT
F. H. THIBODEAU
JACK ALLEN
E. McKENZIE
E. W. MALINQUIST
HUGH DAVIS
HARRY BARNES
WILLIAM GESNER
HENRY REIFEL
MAX RIPSTEIN
JACOB DIAMOND

hereinafter called the defendants, and divers other persons to this Grand Jury and these Grand Jurors unknown, did at the bay of San Francisco, within the district and division aforesaid, and within the jurisdiction of this court, on the 1st day of January, 1924, the real and exact date of which is to this Grand Jury and these Grand Jurors unknown, and continuously at all the times thereafter up to and including the date of the filing of this indictment, wilfully, unlawfully, feloniously and knowingly conspire, combine, confederate and agree together and with divers other persons whose names are to these Grand Jurors and to this Grand Jury unknown, to commit certain offenses against the United States that is to say:

(a) To wilfully, unlawfully, feloniously and knowingly sell, transport, import, deliver, furnish

and possess [7] within the United States intoxicating liquor for beverage purposes, to wit, whiskey, wine, champagne, gin and beer containing one-half of one percentum and more of alcohol by volume and fit for use and intended for use for beverage purposes within the United States, the said acts to be then and there unlawful and prohibited and contrary to the provisions of the Act of October 28, 1919, known as the "National Prohibition Act," and the convention, agreement and treaty between the United States and Great Britain of May 22, 1924, and intended for use for beverage purposes in violation of said Act and said Treaty;

(b) Wilfully, unlawfully, feloniously, knowingly and fraudulently import and bring into the United States, and to assist in importing and bringing into the United States merchandise contrary to law, to wit, whiskey, champagne, wine, gin and beer containing one-half of one per centum and more of alcohol by volume and fit for use and intended for use for beverage purposes within the United States, the said acts to be then and there unlawful and prohibited and contrary to the provisions of Section 593, subdivision (b) of the Tariff Act of 1922, and the convention, agreement and treaty between the United States and Great Britain of May 22, 1924, and intended to be imported and brought into the said United States in violation of said Acts and Treaty.

IX.

And the Grand Jurors aforesaid, on their oaths

aforesaid, do further allege, charge, find and present:

That said conspiracy, combination, confederation and agreement between the said defendants and said divers other persons whose names are as aforesaid to these Grand Jurors and this Grand Jury unknown, was continuously throughout [8] all of the time from and after on or about the 1st day of January, 1924, and at all of the times thereafter and herein mentioned and referred to, and particularly at the time and times of the commission and consummation of each and all of the overt acts in this indictment set forth and up to and including the time of the filing of this indictment in existence and process of execution.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

X.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further allege, charge, find and present: That in pursuance of said conspiracy, combination, confederation and agreement herein in this indictment set out, and to effect and accomplish the object thereof, and with the intent and for the purpose of effecting and accomplishing the objects thereof;

(a) Said defendants and each of them did at Vancouver, B. C., in the month of September, 1924, cause the steamer "QUADRA" to be loaded with about 12,000 cases of intoxicating liquor, to

wit, whiskey, champagne, wine, gin and beer, and did cause said steamer "QUADRA" with said cargo of intoxicating liquor on the 10th day of September, 1924, to leave said port of Vancouver, B. C., and proceed to a point opposite and within a distance of less than twelve miles fro· said Farallone Islands and which said distance could be traversed in less than one hour by said steamer "QUADRA" and by the motor-boats hereinafter mentioned, for the purpose and with the intent of then and there unloading, selling, delivering, furnishing, transporting and importing and bringing into the United States said cargo of intoxicating [9] liquor, to wit, whiskey, champagne, wine, gin and beer, which was then and there fit for use and intended for use for beverage purposes within the United States; that from and at said point said defendants did then and there wilfully, unlawfully and fraudulently unload, furnish and deliver from said vessel at said point a portion of said cargo of intoxicating liquors on to and upon motor-boats "903 B," "C–55," "Marconi," "California," "Ocean Queen" and divers other motor-boats whose names and masters are to this Grand Jury and these Grand Jurors unknown, well knowing that said motor-boats operated by their masters would and did transport, deliver, import and bring into the United States, and within the jurisdiction of this court, said portion of said cargo of intoxicating liquor, to wit, whiskey, champagne, wine, gin and beer, then and there containing one-half of one per centum and more of alcohol

by volume and fit for use and intended for use for beverage purposes within the United States, and which said unloading, furnishing, delivering, transporting, and importing and bringing into the United States of said intoxicating liquor by said defendants and on said motor-boats was then and there prohibited, unlawful and in violation of Section 3 of Title II of the Act of Congress of October 28, 1919, known as the National Prohibition Act, subdivision (b) of Section 593, of the Tariff Act of 1922, and of the Convention, Agreement and Treaty between the United States and Great Britain of May 22, 1924, and intended for use in violation of said acts and each of them and said treaty.

(b) Said defendants and each of them did on the 29th day of September, 1924, and while the steamer "QUADRA" was at anchor opposite the said Farallone Island, possess, [10] load upon, deliver and furnish to the motor boat "903 B" from said steamer "QUADRA" one bourbon barrel No. 73 containing one hundred gallons of intoxicating liquor, to wit, whiskey, then and there containing one-half of one per centum and more of alcohol by volumn which was then and there fit for use and intended for use for beverage purposes within the United States, and that said defendants did cause said bourbon barrel of whiskey to be transported, imported and brought into the United States, to wit, in the city and county of San Francisco, State of California, and within the jurisdiction of this court, on said 29th day of September, 1924, and

that the possession, loading, delivering, furnishing, transporting, importing and bringing into the United States of said intoxicating liquor by said defendants at the time and place aforesaid was then and there prohibited, unlawful and in violation of Section 3 of Title II of the Act of Congress of October 28, 1919, known as the National Prohibition Act, and of subdivision (b) of Section 593 of the Tariff Act of 1922 and intended for use for beverage purposes in violation of said acts and each of them.

(c) Said defendants and each of them did on October 11th, 1924, and while the steamer "QUADRA" was at anchor opposite the said Farallone Islands possess, load upon, deliver and furnish to the motor *boar* "903B" from said steamer "QUADRA" intoxicating liquor, to wit:

62—10 gallon kegs of alcohol,
5 cases gin, 12 bottles to each case,
2 cases brandy, 12 bottles to each case,
24 sacks whiskey, 12 bottles to each sack,
5 sacks Vermouth, 12 bottles to each sack,

then and there containing one-half of one per centum and more of alcohol by volume which was then and there fit for [11] use and intended for use for beverage purposes within the United States and that said defendants Jack Allen and Carl Neilson did thereupon and upon said day and by means of said motor-boat "903–B" transport, import and bring into the United States, to wit, into San Francisco Bay said intoxicating liquor and that the possession, loading, delivering, furnishing, transporting, and bringing into the United States of said intoxicating

liquor by defendants at the time and in the manner aforesaid was then and there prohibited, unlawful and in violation of Section 3 of Title II of the Act of Congress of October 28, 1919, known as the National Prohibition Act, and of subdivision (b) of Section 593 of the Tariff Act of 1922, and intended for use for beverage purposes in violation of said Acts and each of them.

(d) Said defendants and each of them on October 12, 1924, and while the steamer "QUADRA" was opposite the said Farallone Islands and within a distance from said Farallone Islands that could be traversed by said steamer "QUADRA" in less than one hour and within a distance from said Farallone Islands that could be traversed by motor-boat "C–55" hereinafter mentioned in less than one hour, did possess, load upon, deliver and furnish to the motor-boat "C–55" from said steamer "QUADRA" intoxicating liquor, to wit:

89 sacks whiskey, 12 bottles to each sack,
1 case beer, 22 pt. bottles,

then and there containing one-half of one per centum and more of alcohol by volume which was then and there fit for use and intended for use for beverage purposes within the United States and that said defendants Emillio Pensotti and [12] E. McKenzie did thereupon and upon said day and by means of said motor-boat "C–55" attempt to transport, import and bring into the United States and within the jurisdiction of this court, to wit, into San Francisco Bay said intoxicating liquor, but were prevented from so doing by the arrest of

said Emillio Pensotti and E. McKenzie and the seizure of said motor-boat "C-55" by duly appointed, qualified and acting officers of the Coast Guard of the United States, and that the possession, loading, delivering, furnishing, transporting and attempt to bring into the United States, of said intoxicating liquor by said defendants at the time and in the manner aforesaid, was then and there prohibited, unlawful and in violation of Section 3 of Title II of the Act of Congress of October 28, 1919, known as the National Prohibition Act and of subdivision (b) of Section 593 of the Tariff Act of 1922 and intended for use for beverage purposes in violation of said Acts and each of them.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

STERLING CARR,
United States Attorney.

A true bill.

PERRY EYRE,
Foreman.

[Endorsed]: Presented in Open Court and Ordered Filed Nov. 20, 1924. Walter B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [13]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEO. FORD et al.,

Defendants.

DEMURRER TO INDICTMENT.

Come now Geo. Ford, Geo. Harris, J. Evelyn, R. Bruce, F. W. Taylor, J. McQueen, H. McVey, C. Grant, F. McLeod, R. Gisborne, R. C. Shiels, J. H. Mason, J. Y. Phillips, G. Winterburn, Emelio Pensotti, A. Cavanaugh, E. Sargent, W. Hastie, B. James, J. McLennand, F. H. Thibodeau, R. Gardiner, J. McLennan, J. McCluskie, Charles Horace Belanger, Vincent Quartararo, E. McKenzie, some of the defendants in the above-entitled action, and each individually and separately protest their and each of their innocence of all the acts alleged against them in the indictment herein, and especially reserving and in nowise waiving their or either of their rights to plead "not guilty" to said indictment, demur and except to such indictment and for their demurrer and exception thereto urge and say:

I.

That said indictment does not state facts sufficient to constitute an offense against the laws of

the United States of America and particularly against the provisions of Section 37 of the Criminal Code of the United States, and/or against the provisions of the "National [14] Prohibition Act," and particularly Section 3, Title II, thereof and/or against the Tariff Act of 1922 and particularly Section 593, subdivision "B" thereof, and/or against the Convention, Agreement and Treaty with the United States and Great Britain and particularly Article 2 thereof, particularly set forth in the indictment on file herein.

II.

The above-entitled court has not now and never has had jurisdiction of the subject matter of said indictment and of the acts alleged therein, in this: That the acts and all of them alleged to have been committed in said indictment on the part of these defendants and each of them occurred at a place beyond and without the territorial limits of the United States, occurring at a greater distance than a marine league, or three geographic miles, from the low-water mark of the shore-line of the United States and of the Farallone Islands.

III.

That said court has not now and has never had jurisdiction of the persons of these demurring defendants and each of them in this: That they are not now and never have been within the territorial limits of the United States or its possessions (except upon being arrested outside of the jurisdiction of the United States and being by force brought into said jurisdiction and arrested) and said defend-

ants and each of them are now and and at all of the times herein mentioned have been subjects and citizens of Great Britain and the British Empire and of his Britannic Majesty; and said defendants and each of them were arrested while on a British vessel on the high seas, sailing and registered under and pursuant to the laws of Great Britain and owing allegiance to the Sovereign Power of Great Britain and no other Sovereign, and at a place more than a marine league, or [15] three geographic miles, from the low-water mark of the shores of the United States and the Farallone Islands.

IV.

That said indictment is defective because, except by mere conclusion of the pleader, it does not state facts sufficient to bring the cause within the purview of Section 37 of the Criminal Code of the United States and/or the "National Prohibition Act," Section 3, Title 2, thereof, and/or the Tariff Act of 1922, Section 593, subdivision "B" thereof, and/or the Convention, Agreement and Treaty between the United States and Great Britain, particularly Article 2 thereof.

V.

That said indictment is duplicitous, because in its language the defendants are charged with a conspiracy to commit three separate and different offenses having little or no connection with each other.

VI.

That said indictment is duplicitous, because in it is alleged the defendants are charged with a conspiracy to do eight separate and distinct acts in vio-

lation of the "National Prohibition Act" and to do four different acts in violation of the Tariff Act of 1922 and said treaty between the United States and Great Britain above referred to.

VII.

That said indictment is uncertain in this: That it does not appear therein, nor can it be ascertained therefrom how or in what manner the conspiracy alleged to have been effected in paragraph VIII of said indictment on the first day of January, 1924, at the bay of San Francisco, within the district and division above described, which said conspiracy is in said paragraph VIII alleged to have been [16] in existence continuously at said place up to the time of filing said indictment, could have existed in the manner alleged in said paragraph VIII, when all of the acts of said defendants in said indictment, alleged in paragraph X thereof, occurred at Vancouver, British Columbia, and on the high seas from British Columbia to a point as in said indictment alleged opposite and within a distance of less than 12 miles from said Farallone Islands, and when all of the acts of these demurring defendants are alleged to have occurred in said paragraph X out of the bay of San Francisco and out of the jurisdiction of the above-entitled court.

VIII.

That said indictment is uncertain in this: That it does not appear in said indictment, nor can it be ascertained therefrom, how or in what manner these demurring defendants could be conspiring in the bay of San Francisco, in the district above des-

cribed, in the months of September and October, to do any act or thing in violation of the laws of the United States, when it appears in said indictment that said demurring defendants were and each of them are alleged to have been at Vancouver, British Columbia, and on the high seas and at a point within 12 miles of the Farallone Islands and without territorial jurisdiction of the United States.

IX.

That said indictment is uncertain in this: That it cannot be ascertained therefrom how or in what manner the facts alleged in subdivision "a" paragraph X thereof could effect or accomplish the object of the conspiracy in said indictment alleged, or could be in pursuance of the conspiracy in said indictment alleged. [17]

X.

That said indictment is uncertain in this: That it does not appear therein, nor can it be ascertained therefrom, how or in what manner the facts alleged in subdivision "b" of said paragraph X could be in pursuance of the conspiracy in said indictment alleged, or could effect and/or accomplish the object thereof; that said subdivision "b" is further uncertain in this: It does not appear therein, nor can it be ascertained therefrom, how or in what manner or by what means the barrel of whiskey therein alleged to have been loaded upon, delivered and furnished to the motor-boat "903–B" at the place in said indictment alleged from said steamer "QUADRA," was transported and/or imported and/or brought into the United States, to wit:

into the city and county of San Francisco, State of California, and within the jurisdiction of this court, or how or in what manner the defendants or either of them were connected with the transportation of said barrel of whiskey after having loaded upon, delivered and furnished same to said motor-boat "903–B."

XI.

That said indictment is uncertain in this: It does not appear therein, nor can it be ascertained therefrom, how or in what manner the acts alleged in subdivision "C" of said paragraph X were in pursuance of said conspiracy and/or effected and/or accomplished the object thereof. That said subdivision "C" is further uncertain in this: It does not appear therein, nor can it be ascertained therefrom, what connection, if any, these demurring defendants had with the motor-boat "903–B," in said subdivision "C" mentioned, or with the transportation of the liquor alleged to have been loaded thereon, after the loading of said liquor on said motor-boat "903–B" from said steamer "QUADRA." [18]

XII.

That said indictment is uncertain in this: It does not appear therein, nor can it be ascertained therefrom, how or in what manner the acts alleged on the part of these defendants in subdivision "D" of said paragraph X of said indictment were in pursuance of said conspiracy in said indictment alleged, and/or effected and/or accomplished or could effect or accomplish the object thereof.

XIII.

That said indictment is further uncertain in this: It does not appear therein, nor can it be ascertained therefrom, except from the legal conclusion of the pleader, how or in what manner the acts alleged in subdivision "A" of paragraph X were then and there prohibited, unlawful and in violation of Section 3 of Title 2 of the Act of Congress of October 28, 1919, known as the "National Prohibition Act," and/or subdivision "B" of Section 593 of the Tariff Act of 1922, and/or the Convention, Agreement and Treaty between the United States and Great Britain of May 22, 1924, or either of said acts or any of them.

XIV.

That said indictment is uncertain in this: That it does not appear therein, nor can it be ascertained therefrom, other than from the legal conclusion of the pleader, how the acts set forth in subdivision "B," "C" and "D," and each or either of them in said paragraph X of said complaint, were or how either was prohibited, unlawful and in violation of Section 3, Title 2, of the Act of Congress of October 28, 1919, known as the "National Prohibition Act" and of subdivision "B" of Section 593 of the Tariff Act of 1922, and/or how the liquor in said subdivision mentioned were or either of it was by these defendants or any of them intended for use for beverage purposes in violation of said or either of said acts. [19]

XV.

That said treaty between the United States and

Great Britain in said indictment referred to was and is unlawful in this: The same is in violation of the Eighteenth Amendment to the Constitution of the United States. That said treaty is void in this: That one of the contracting parties thereto, viz.: His Britannic Majesty was and is without power to enter into said treaty and/or enter into said treaty waiving the rights of any of His subjects, or any citizen of the British Empire, guaranteed to them under Magna Charta and/or the basic law or the laws of Great Britain.

XVI.

That said treaty in said indictment referred to is void and of no effect as to these demurring defendants for the reason that it is violative of the law of Nations and is not a part of the law of Nations.

XVII.

That said indictment is uncertain in this: That it does not appear therein, nor can it be ascertained therefrom, how or in what manner or by what means these defendants or either of them are or could be affected by the treaty between Great Britain and the United States therein set forth.

XVIII.

That in said indictment it does not appear, nor can it be ascertained therefrom, whether these defendants or either of them were or are subjects of Great Britain, and thus to be affected by the treaty between the United States and Great Britain therein referred to.

XIX.

That said indictment is uncertain in this: that it does not appear therein, nor can it be ascertained [20] therefrom, whether the steamer "QUADRA" in said indictment referred to, or any other vessel, ship or motor-boat in said indictment referred to, was at any time in said indictment referred to a private or any vessel under the British flag, outside the limits of the territorial waters of the United States, its territories or possessions, or if said steamer "QUADRA" or any of said steamers, vessels or motor-boats in said indictment referred to were at any time sailing under British registry.

WHEREFORE, defendants pray that said indictment be dismissed; that the bail of defendants be exonerated and that defendants be permitted to go hence without a day; and for such other or further order as to the Court may seem proper in the premises.

KENNETH M. GREEN,
Attorney for Said Defendants.

[Endorsed]: Filed Nov. 29, 1924. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [21]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE FORD et al.,

Defendants.

MOTION TO QUASH.

Now come the defendants, Geo. Ford, Geo. Harris, J. Evelyn, R. Bruce, F. W. Taylor, J. McQueen, H. McVey, C. Grant, F. McLeod, R. Gisborne, R. C. Shiels, J. H. Mason, J. Y. Phillips, G. Winterburn, A. Cavanaugh, E. Sargent, W. Hastie, B. James, J. McLennand, F. H. Thibodeau, R. Gardiner, J. McLennan, J. McCluskie, Charles Horace Belanger and Vincent Quartararo, Emilio Pensotti, E. McKenzie, by their counsel, and move the above-entitled court that the indictment returned in said cause, be quashed and held to be naught for the following reasons:

First: Said indictment does not sufficiently present a violation of any of the penal laws of the United States of America so as to apprise these defendants or either of them with what offense they or either of them stand charged with having committed.

Second. Said defendants and each of them specially except to said indictment for the reason that there is now pending against them and on file herein, Indictment No. 15,829 charging them and all of them (save defendant Vincent Quartararo) with the same offense arising out of the same acts set forth and included and relied upon in the indictment herein moved to be quashed and held for naught.

Third. The defendants specially except to said indictment [22] because the same was returned against them and all of them (save defendant Quartararo) without sufficient or any evidence being presented to the Grand Jury returning said indictment showing the violation by them of the penal laws of the United States of America or an offense of any kind against the laws of the United States of America.

Fourth. Said defendants specially except to said indictment on the ground the same was returned in a term of this Court other than the term in which the Grand Jury returning said indictment was impaneled, and that the term of said Grand Jury was not extended in accordance with the provisions of law providing for the extensions of a term of the Grand Jury.

Fifth. That said indictment fails to allege that the steamer "Quadra" and/or the motor-boats "*93–B,*" and/or "C–55," and/or "Marconi" and/or "California" and/or "Ocean Queen," and/or divers other motor-boats referred to in said indictment are British vessels under the British flag.

Sixth. That said indictment does not disclose on its face if said steamer "Quadra" and/or the motorboats particularly referred to in the preceding paragraph, were or either of them was outside the limits of the territorial waters of the United States of America, its territories or possessions.

Seventh. That said indictment does not state facts sufficient to constitute an offense against the laws of the United States of America and particularly against the provisions of Section 37, of the Criminal Code of the United States, and/or against the provisions of the "National Prohibition Act," and particularly Section 3, Title II, thereof, and/or against the Tariff Act of 1922, and particularly Section 593, subdivision "B" thereof, and/or against the Convention, Agreement and Treaty with the United States and [23] Great Britain, and particularly Article 2 thereof, particularly set forth in the indictment on file herein.

Eighth. The above-entitled court has not now and never had jurisdiction of the subject matter of said indictment and of the acts alleged therein, in this: That the offense alleged to have been committed in said indictment on the part of these defendants and each of them, occurred at a place beyond and without the territorial limits of the United States, occurring at a greater distance than a Marine league from the low-water mark of the shore-line of the United States and of the Farallone Islands.

Ninth. That said indictment fails to show how or in what manner these defendants or either of

them could and/or did conspire to violate the terms of the treaty in said indictment referred to.

Tenth. That said indictment fails to show how or in what manner or by what means, jurisdiction to proceed against these defendants or either of them under the treaty referred to in said indictment could be or is conferred upon the above-entitled or any court of the United States of America.

WHEREFORE, these moving defendants respectfully pray that this indictment be quashed and held for naught.

KENNETH M. GREEN,
Attorney for Moving Defendants.

[Endorsed]: Filed Nov. 29, 1924. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [24]

In the Southern Division of the District Court of the United States for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEORGE FORD et al.,
Defendants.

MOTION TO EXCLUDE AND SUPPRESS EVIDENCE.

To the Honorable, the above-entitled Court:

The petition of Geo. Ford, Geo. Harris, J. Evelyn, R. Bruce, F. W. Taylor, J. McQueen, H. McVey, C. Grant, F. McLeod, R. Gisborne, R. C. Shiels, J. H. Mason, J. Y. Phillips, G. Winterburn, A. Cavanaugh, E. Sargent, W. Hastie, B. James, J. McLennand, F. H. Thibodeau, R. Gardiner, J. McLennan, J. McCluskie, Emelio Pensotti, E. McKenzie, Charles Horace Belanger and Vincent Quartararo, respectfully shows:

That they are defendants in the above-entitled action.

That your petitioners Geo. Ford, Geo. Harris, J. Evelyn, R. Bruce, F. W. Taylor, J. McQueen, H. McVey, C. Grant, F. McLeod, R. Gisborne, R. C. Shiels, J. H. Mason, J. Y. Phillips, G. Winterburn, A. Cavanaugh, E. Sargent, W. Hastie, B. James, J. McLennand, F. H. Thibordeau, R. Gardiner, J. McLennan and J. McCluskie, are now and at all times herein mentioned were citizens of the United Kingdom of Great Britain and Ireland and her dominions, and subjects of His Britanic Majesty, King George "V," and at all times herein mentioned, comprised the officers and crew of the steamship "Quadra," hereinafter mentioned and described. [25]

That the said steamship "Quadra," is now and at all of the times herein mentioned, was and ever

since said steamship was launched has been, a vessel of British registry, and that during all of the said times has been operated as such.

That the said steamship "Quadra" at all of the times hereinafter mentioned was capable of a maximum speed of nine (9) miles per hour, and no more, and is not owned in whole or in part by any citizen of the United States.

That on the 12th day of October, 1924, at the hour of 11:20 o'clock A. M., A. T. S. on said day, said steamship "Quadra" was laid to on the high seas off the coast of the State of California, United States of America, at a point at a greater distance than 12 miles from the coast of the United States, its territories and possessions, and at a greater distance from the coast of the United States, its territories and possessions, and particularly the Farallone Islands, than could be traversed in one hour by the said steamship "Quadra," and at a greater distance from the coast of the United States, its territories and possessions and particularly from the Farallone Islands, than could be traversed in one hour by the motor-boats "903–B," "C–55," "Marconi," "California," or "Ocean Queen," or any or either of said motor-boats.

That on the said 12th day of October, 1924, while said steamship "Quadra" was laid to at the time and place aforesaid, said steamship "Quadra" was boarded by a prize crew consisting of officers and men from the United States coast guard cutter, "Shawnee," which said prize crew did then and there over the protest of said defendant George

Ford, who was then and there in command of said steamship "Quadra," and under threats of use of violence and in violation of the law of nations and the rights of the said steamship "Quadra," and her officers and crew upon the high [26] seas, and in violation of the Convention, Agreement and Treaty between the United States of America and Great Britain entered into and ratified on the 22d day of May, 1924, and without the consent of said defendant George Ford, or any of his officers and crew, and in violation of their rights as British subjects, against their will, and without any search-warrant, order of Court, or warrant for the arrest of said defendants, or any of them, and without witnessing the commission of any violation of any law of the United States on the part of said defendants or any of them, and in violation of said defendants' constitutional rights guaranteed them by the fourth and fifth amendment to the Constitution of the United States, seized said steamship "Quadra," in the name of the Government of the United States, as evidence of violations of certain laws of the United States in the indictment on file herein more particularly set forth, and made fast aboard said steamship "Quadra," a line from said United States coast guard cutter "Shawnee."

That the said defendants, George Ford, George Harris, and J. Evelyn, were then and there the captain, first officer and second officer, respectively, of the said steamship "Quadra," and were then and there and for several years prior thereto had been

competent navigators, holding British Board of Trade certificates as such.

That the said defendants, George Ford and George Harris, then and there held and now hold, masters' certificates issued by said British Board of Trade, entitling them to navigate and command British vessels of any tonnage in any waters on the high seas; that said defendant J. Evelyn, then and there held and now holds a British Board of Trade certificate entitling him to act as a navigating officer on British vessels of any tonnage in any waters on the high seas. [27]

That at the hour of 11:50 A. M., A. T. S., on said 12th day of October, 1924, and just before the tow-line from the United States coast guard cutter "Shawnee," was placed aboard the said steamship "Quadra" as aforesaid, the said defendants, George Ford, George Harris and J. Evelyn, verified the position of the said steamship "Quadra," by cross-compass bearings between a point on the said coast of California, designated upon the chart of said coasts issued by the United States Government, as Point Reyes, and a point on said chart designated as North Farallone Rocks, by a vertical angle of said Point Reyes, which is designated on said chart as being 597 feet in height, and by an ex-meridian altitude of the sun, which said observations all coincided and placed the position of said steamship "Quadra" at said time and place, at latitude 37°–49½′ north, and longitude 123°–22½′ west, which said position of said steamship "Quadra" was then and there according to said chart, 13½

miles west 1/2 south of the most western of the said North Farallone Rocks, which said rock was then and there the nearest United States territory.

That at the time said observations were taken by said officers of the said steamship "Quadra" as aforesaid, the officers comprising a part of the prize crew from the said United States coast guard cutter, "Shawnee," were invited to the bridge of said steamship "Quadra," and asked by said defendant George Ford, to verify the position of said steamship "Quadra," as ascertained by said defendants George Ford, George Harris and J. Evelyn, as aforesaid. That said officers of said prize crew then and there refused and declined to do so.

That thereafter and at the hour of 12:27 P. M., A. T. S., of said day, the said United States coast guard cutter [28] "Shawnee," over the protest of said defendant George Ford, and under threats of use of force and in violation of the law of nations and the rights of the said steamship "Quadra" and her officers and crew upon the high seas, and in violation of the Convention, Agreement and Treaty between the United States of America and Great Britain, entered into and ratified on the 22d day of May, 1924, and without the consent of said defendant George Ford, or any of his officers or crew, and in violation of their rights as British subjects, against their will, and without any search-warrant, order of Court, or warrant for the arrest of said defendants or any of them, and without witnessing the commission of any violation of any law of the United States on the part of said defendants or any

of them, and in violation of said defendants' Constitutional rights guaranteed them by the fourth and fifth amendment to the Constitution of the United States, proceeded to tow, and did tow the said steamship "Quadra," into the port of San Francisco, and into the territorial jurisdiction of the United States of America and into the jurisdiction of the above-entitled court, and they profess to hold said steamship "Quadra," together with the cargo therein contained, against the will of your petitioners, as evidence of violations of certain laws of the United States in the indictment on file herein more particularly set forth.

That the officers of the United States Coast Guard Service, the Collectors of Customs for the Northern District of California, and the United States Attorney for the Northern District of California, propose to use the said steamship "Quadra" and her cargo, together with the facts concerning the seizure thereof, as evidence at the trial of the above-entitled cause, and that by reason thereof and the facts herein set forth, the defendants' rights as British subjects, [29] and under the law of nations, and under the terms of the treaty hereinbefore referred to, and the defendants' rights under the fourth and fifth amendments to the United States Constitution, have and will be violated, unless the Court order the said steamship "Quadra," with all its cargo, together with all knowledge derived from the seizure of same, excluded from evidence at the trial of said cause.

WHEREFORE, said defendants, Geo. Ford, Geo. Harris, J. Evelyn, R. Bruce, F. W. Taylor, J. McQueen, H. McVey, C. Grant, F. McLeod, R. Gisborne, R. C. Shiels, J. H. Mason, J. Y. Phillips, G. Winterburn, A. Cavanaugh, E. Sargent, W. Hastie, B. James, J. McLennand, F. H. Thibodeau, R. Gardiner, J. McLennan, J. McCluskie, Emelio Pensotti, E. McKenzie, Charles Horace Belander and Vincent Quartararo, pray that the United States Attorney, marshal, clerk, Collector of Customs, and the coast guard officers, be notified, and that the Court direct and order that the said steamship "Quadra," together with her cargo, be excluded from evidence against them at the trial of said cause, together with all knowledge derived from the seizure of the same.

KENNETH M. GREEN,
Attorney for said Defendants. [30]

State of California,
City and County of San Francisco,—ss.

George Ford, being first duly sworn, deposes and says:

That he is one of the defendants in the above-entitled action and one of the petitioners named in the foregoing petition; that he makes this verification for and on behalf of said petitioners; that he has read said petition and knows the contents thereof; that the same is true of his own knowledge, except as to matters therein stated on his information or belief, and as to those matters, that he believes it to be true.

GEORGE FORD.

Subscribed and sworn to before me this 28th day of November, 1924.

[Seal] JOHN WISNOM,
Notary Public, in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Nov. 29, 1924. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [31]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,
Plantiff,

vs.

GEORGE FORD et al.,
Defendants.

AFFIDAVIT OF C. F. HOWELL.

United States of America,
Northern District of California,
City and County of San Francisco,—ss.

C. F. Howell being first duly sworn, deposes and says: That he is now and at all of the times herein mentioned was Lieutenant Commander, United States coast guard, in command of the coast guard cutter "Shawnee";

That on the 12th day of October, 1924, and while he was in command of said coast guard cutter

"Shawnee" as aforesaid, he seized the steamship "Quadra" referred to in the petition of George Ford and others, and the motion to exclude and suppress evidence in the above-entitled action, and the motor-boat "C–55" and caused said steamship "Quadra" and said motor-boat "C–55" to be brought into the bay of San Francisco and turned over the customs department of the treasury department; that at the time of the seizure of said steamship "Quadra" and said motor-boat "C–55" they were and each of them was at a point off the coast of the State of California, United States of America, which was and is less than twelve miles from the coast of the United States, its territories and possessions, and at a distance from the coast of the State of California, United States [32] of America that could be traversed in less than one hour by said steamship "Quadra" and in less than one hour by said motor-boat "C–55"; that at said time and at said place said motor-boat "C–55" was transporting intoxicating liquor, to wit, whiskey and other liquors and said steamship "Quadra" was transporting intoxicating liquor, to wit, whiskey and other liquors.

C. F. HOWELL.

Subscribed and sworn to before me this 5th day of December, 1924.

[Seal] C. M. TAYLOR,

Deputy Clerk, U. S. District Court, Northern District of California.

[Endorsed]: Filed Dec. 6, 1924. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [33]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the city and county of San Francisco, on Monday, the 5th day of January, in the year of our Lord, one thousand nine hundred and twenty-five, Present: the Honorable JOHN S. PARTRIDGE, District Judge.

No. 15829, No. 15831, No. 15914, No. 15915.

UNITED STATES OF AMERICA

vs.

GEO. FORD et al.

MINUTES OF COURT—JANUARY 5, 1925—ORDER DENYING MOTIONS TO EXCLUDE EVIDENCE Etc., AND ORDER OVERRULING DEMURRERS.

Pursuant to oral opinion this day rendered, IT IS ORDERED that the motions to exclude certain evidence, the motions to suppress certain evidence, and the motions to quash indictment be and the same are hereby denied. Further ordered that the demurrers to indictment be and same are hereby overruled.

Thereupon counsel for defendants entered exceptions to said orders.

Page 408, Vol. 58, Book of Minutes. [34]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

Nos. 15914, 15915, 15829, 15831.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEO. FORD et al.,
Defendants.

(OPINION.)

January 5, 1925.

Hon. STERLING CARR, U. S. District Attorney, for the plaintiff;

KENNETH M. GREEN, Esq., attorney for certain defendants;

FRANK J. HENNESSY, Esq., attorney for certain defendants.

PARTRIDGE.—This is a motion to exclude and suppress evidence. The defendants are charged with a violation of the National Prohibition Act and the Tariff Act of 1922, and also with a conspiracy to violate those acts. As overt acts, the indictments charge that in pursuance of the conspiracy, defendants loaded the steamer "Qua-

dra," at Vancouver, with a large quantity of liquor for delivery here. She sailed to a point opposite San Francisco, on the high seas, and, it is alleged, de[illegible]ered to various smaller vessels considerable quantities of liquor, which these boats landed on our shores.

The "Quadra" was seized by the Government boats, brought into this port, and her cargo of liquor removed to Government warehouses. Her officers and crew were arrested, and, together with various other persons, are the defendants in these cases. [35]

The affidavit of the defendants, on the motion to suppress, alleges that the "Quadra" was boarded and seized more than four leagues from shore, and further *ont* than she could sail in an hour. The captain of the Government vessel, on the other hand, makes oath that she was within an hour's steaming. For the purposes of this opinion, I assume that the Government official states the facts.

The question, then, squarely presented, is this: Where the Government seizes a vessel, charged with violation of our laws, more than one league and less than four from land, can the vessel and her cargo be used as evidence in a criminal prosecution.

The question presented is one of the utmost importance. This Nation has, by a constitutional amendment, and appropriate legislation, declared that intoxicating liquors shall no longer be sold or distributed here. That change in our

fundamental charter, and the accompanying legislation, has brought about a condition never even approached in the whole history of criminal jurisprudence. The violators apprehended run into the thousands in this district alone, and there is every reason to believe that only a very small percentage of those who violate the law are caught and charged. Such a condition has congested our courts to such a degree that it is almost impossible to cope with the situation. The delay resulting from this overwhelming condition has encouraged other thousands, not alone in persistent violation of this law, but in the most open and brazen defiance of our Government and its courts. Moreover, respect thus lost, and fear of punishment diminished or postponed, has bred in the minds of thousands, especially among the ignorant and illiterate of our foreign-born population, a contempt of all law and all authority—so that it is not too much to say that the traffic in illicit liquor is the nursery of crime of every description. [36]

Bearing upon the question of this traffic and having reference to a condition that arose in San Francisco, it is said that, "There is in this position an assumption of a fact which does not exist, that when the liquors are taken in excess the injuries are confined to the party offending. The injury, it is true, first falls upon him in his health, which the habit undermines; in his morals, which it weakens; and in the self-abasement which it creates. But, as it leads to neglect of business and waste of property and general demoralization,

it affects those who are immediately connected with and dependent upon him. By the general concurrence of opinion of every civilized and Christian community, there are few sources of crime and misery to society equal to the dram-shop, where intoxicating liquors, in small quantities, to be drunk at the time, are sold indiscriminately to all parties applying. The statistics of every State show a greater amount of crime and misery attributable to the use of ardent spirits obtained at these retail liquor saloons than to any other source. The sale of such liquors in this way has therefore been, at all times, by the courts of every state, considered as the proper subject of legislative regulation. Not only may a license be exacted from the keeper of the saloon before a glass of his liquors can be thus disposed of, but restrictions may be imposed as to the class of persons to whom they may be sold, and the hours of the day and days of the week on which the saloons may be opened. Their sale in that form may be absolutely prohibited."

Crowley vs. Christensen, 137 U. S. 86, at page 90.

Any American vessel, or American citizen engaging in this traffic, is of course, liable to seizure and arrest. So, great organizations have arisen who conduct this illicit business in foreign ships, manned by foreign officers and [37] crews. They approach our shores as nearly as they dare, lie to, and transfer their cargoes to small swift boats. In recognition of this situation, the United

States and Great Britain, on May 22, 1924, entered into a Treaty, the pertinent provisions of which are as follows:

"(1) His Britannic Majesty agrees that he will raise no objection to the boarding of private vessels under the British Flag outside the limits of territorial waters by the authorities of the United States, its territories or possessions in order that enquiries may be addressed to those on board and an examination be made of the ship's papers for the purpose of ascertaining whether the vessel or those on board are endeavoring to import or have imported alcoholic beverages into the United States, its territories or possessions in violation of the laws there in force. When such enquiries and examination show a reasonable ground for suspicion, a search of the vessel may be instituted.

"(2) If there is reasonable cause for belief that the vessel has committed or is committing or attempting to commit an offense against the laws of the United States, its territories or possessions prohibiting the importation of alcoholic beverages, the vessel may be seized and taken into a port of the United States, its territories or possessions for adjudication in accordance with such laws.

"(3) The rights conferred by this article shall not be exercised at a greater distance from the coast of the United States, its territories or possessions than can be traversed in one hour by the vessel suspected or endeavoring to commit the offense. In cases, however, in which the liquor is intended to be conveyed to the United States, its territories or possessions by a vessel other than

the one boarded and searched, it shall be the speed of such other vessel and not the speed of the vessel boarded which shall determine the [38] distance from the coast at which the right under this article can be exercised."

But was such a convention necessary?

In the case of Church vs. Hubbard, 2 Cranch, 187, the question involved was an insurance policy on a vessel, which excepted from its terms seizure by the Portuguese government for illicit trade. At that time (1804) Portugal prohibited all trade of any kind or character whatsoever with her colonies and dependencies, one of which was Brazil. The vessel insured was fitted out for the express purpose of trading illicitly with Rio de Janiero. The vessel was seized five leagues (fifteen miles) from the shore and was condemned by the Portuguese authorities at Rio.

In the suit on the policy it was claimed that this was not a condemnation in illicit trade for the reason that the seizure of the vessel was illegal and contrary to the law of nations and constituted a mere trespass and act of unlawful violation by a foreign government. Chief Justice Marshall, however, disposed of that contention as it deserved, holding that the power of a government to seize a vessel hovering off the coast for the express purpose of violating the laws of that country was not limited to those waters over which that nation could properly be said to exercise sovereignty. He points out, likewise, that our own statute in existence at that time, and still in existence (Sec.

3067 R. S., Act of March 22, 1799, Chap. XXII, 1 Stat. at Large, 658) makes it lawful to search and seize any vessel violating our revenue laws within four leagues (twelve miles) of the shore. The Chief Justice says:

"That the law of nations prohibits the exercise of any act of authority over a vessel in the situation of the 'Aurora,' and that this seizure is, on that account, a mere [39] marine trespass, not within the exception, cannot be admitted. To reason from the extent of protection, a nation will afford to foreigners, to the extent of the means it may use for its own security, does not seem to be perfectly correct. It is opposed by principles which are universally acknowledged. The authority of a nation, within its own territory, is absolute and exclusive. The seizure of a vessel, within the range of its cannon, by a foreign force, is an invasion of that territory, and is a hostile act which it is its duty to repel. But its power to secure itself from injury may certainly be exercised beyond the limits of its territory. Upon this principle, the right of a belligerent to search a neutral vessel on the high seas, for contraband of war, is universally admitted, because the belligerent has a right to prevent the injury done to himself, by the assistance intended for his enemy; so too, a nation has a right to prohibit any commerce with its colonies. Any attempt to violate the laws made to protect this right, is an injury to itself, which it may prevent, and it has a right to use the means necessary for its prevention. These means

to not appear to be limited within any certain marked boundaries, which remain the same, at all times and in all situations. If they are such as unnecessarily to vex and harass foreign lawful commerce, foreign nations will resist their exercise. If they are such as are reasonable and necessary to secure their laws from violation, they will be submitted to.

"In different seas, and on different coasts, a wider or more contracted range, in which to exercise, the vigilance of the government, will be assented to. Thus, in the channel, where a very great part of the commerce to and from all the north of Europe, passes through a very narrow sea, the seizure of vessels on suspicion of attempting an illicit trade, must necessarily be restricted to very narrow limits; but on the coast of South America, seldom frequented by [40] *by* vessels, but for the purpose of illicit trade, the vigilance of the government may be extended somewhat farther; and the foreign nations submit to such regulations as are reasonable in themselves, and are really necessary to secure that monopoly of colonial commerce, which is claimed by all nations holding distant possessions."

The Supreme Court of Canada has held that even irrespective of any treaty, the Dominion had a right, under the law of nations, to pursue and take a vessel beyond the three-mile limit, when that vessel was charged with the infraction of her laws.

In the matter of the ship "North" (37 Canada Supreme Court, 385), the vessel was charged with

fishing in Canadian waters, contrary to the statutes of the Dominion. She was pursued and captured beyond the three-mile limit. The "North" was an American vessel.

The Supreme Court of Canada holds that by the principles of international law, she could be brought into a Canadian court and condemned. The Court was of the opinion that this could be done even under the well-recognized principles of international law, but further held that if it could be construed to be a breach of international law, that was not a matter affecting the jurisdiction of the Court, but was a matter for the protest of the government of the ship.

The case of Hudson vs. Guestier, 6 Cranch (U. S.), 281, was an action of trover for coffee and logwood, the cargo of the brig "Sea Flower," which had been captured by the French for trading to the revolted ports of the Island of Hispaniola, contrary to the ordinances of France, and carried into the Spanish port of Baracoa, but condemned by a French tribunal at Guadaloupe, and sold for the benefit of the captors, and purchased by the defendant. [41] The trial Court directed the jury "that if they find from the evidence produced, that the brig 'Sea Flower' had traded with the insurgents at Port au Prince, in the island of St. Domingo, and had there purchased a cargo of coffee and logwood, and, having cleared at the said port, and coming from the same, was captured by a French privateer, duly commissioned as such, within six leagues of the island of St. Heneague,

a dependency of St. Domingo, for a breach of said municipal regulations, that in such case the capture of the 'Sea Flower' was legal, although such capture was made at the distance of six leagues from the said island of St. Domingo, or St. Heneague, its dependency, and beyond the territorial limits or jurisdiction of said island, and that the said capture, possession, subsequent condemnation, and sale of the said 'Sea Flower,' with her cargo devested the said cargo out of the plaintiffs, and the property therein became vested in the purchaser."

In affirming a judgment for the defendant, the Court said: "Considering it, then, as settled that the French tribunal had jurisdiction of property seized under a municipal regulation, within the territorial jurisdiction of the government of St. Domingo, it only remains for me to say whether it will make any difference if, as now appears to have been the case, the vessel were taken on the high seas, or more than two leagues from the coast. If the *res* can be proceeded against when not in the possession or under the control of the Court, I am not able to perceive how it can be material whether the capture were made within or beyond the jurisdictional limits of France, or in the exercise of a belligerent or municipal right. By a seizure on the high seas she interfered with the jurisdiction of no other nation, the authority of each being there concurrent." This case overruled Rose vs. Himely, 4 Cranch (U. S.), 241, wherein it was [42] held that a vessel could

not be seized on the high seas, outside territorial jurisdiction, for a breach of a municipal regulation."

See, also, Cucullu vs. Louisiana Ins. Co., 5 Mart. N. S. (La.) 464, wherein the Court said: "Strictly speaking, the authority of a nation cannot extend beyond her own territory. By the common consent of nations this authority has been enlarged, where the sea *in* the boundary, to the distance of a cannon shot from the shore. Within these limits foreigners are protected, and prize*d* cannot rightfully be made of their vessels by enemies. But the right of the nation to protect itself from injury, by preventing its laws from being evaded, is not restrained to this boundary. It may watch its coast, and seize ships that are approaching it with an intention to violate its laws. It is not obliged to wait until the offense is consummated before it can act. It may guard against injury, as well as punish it. If, indeed, in the exercise of this right an unreasonable range was taken, other nations might object. But so long as it is confined to the seizure of vessels entering the port for which they are destined, it will not, it is presumed, form a just ground of complaint. Our own legislation authorizes revenue cutters to visit vessels four leagues from the coast: And the Acts of Congress on this subject are a clear expression of the opinion of our government that nothing in the law of nations prohibited them to confer such power on its cruisers." See Rev. Stat. U. S., Sec. 2760, 6 Stat. Anno. 781."

In England there has been in existence since 1736 (9 Geo. II, Chap. 35) a statute called "The British Hovering Act." That statute assigns a jurisdiction of four leagues from the coast, by prohibiting foreign goods from transshipping within that distance, without payment of duties. It may be noted that it is the same as the Act of 1799 in the [43] United States and that both of these statutes have been declared repeatedly to be consistent with the law and usage of nations. An example is The Coquitlan, 57 Fed. 706. This latter case was in the Supreme Court, 163 U. S. 346, although the matters determined were rather questions of procedure than jurisdiction. It is notable, however, that the point passed upon by the lower court with reference to the jurisdiction was not urged and it is further noted that the "Coquitlan" when captured, was thirty miles from land.

As is pointed out by Saunders (Maritime Law, page 79) a ship can only be called a part of the territory to which she belongs in that she carries with her the laws of her own nation "for the government of those on board in their mutual relations to each other." It is equally true, however, that she is subject to the laws of the country of her nationality only if she is in lawful navigation. (Manning's Law of Nations, 117.) But this ship was not in lawful navigation. The very purpose of her voyage was to transgress the laws of a friendly nation, and to assist the citizens of that nation to break those laws. As pointed out by

Daniel Webster, in his letter to Lord Ashburton (quoted by Mr. Justice Field in U. S. vs. Rodgers, 150 U. S. 264), the law and jurisdiction of a nation accompany its ships, not alone upon the high seas, but into the ports and harbors of foreign countries. But he also concedes, that by the law of nations, the officers and crew are answerable for offenses against the laws of the country where the ship may be.

"Who is the sovereign *de jure* or *de facto* of a territory, is not a judicial, but a political question, the determination of which by the legislative and executive departments of any government conclusively binds the judges, as well as all other officers, citizens and subjects of that government." Jones vs. U. S., 137 U. S. 212. [44]

So, Great Britain has waived her sovereignty over the rum-runners who infest our shores, if they be found within an hour's run. She has recognized that it is beneath the dignity of a great nation to extend protection to her citizens when they see fit to engage in the enterprise of assisting the citizens of another in the wholesale violation of its laws. It is intolerable that ships of foreign nations should violate, and render nugatory—nay, boldly defy—our laws, and assist persons clearly within our jurisdiction so to do. It is the merest sophistry to say that when a foreign ship has a cargo of liquor in her hold in the high seas, she is doing no more than she has a right to do. The thing she really does is to aid and assist persons within our jurisdiction in the bold and con-

temptious defiance of our laws—and then claim immunity because a part of the crime is committed by a foreign vessel more than one marine league from our shores.

On that question there is a recent decision of the United States Circuit Court of Appeals for the Fourth Circuit: Latham vs. United States, decided October 21, 1924, and not yet reported. The language in that case is significant, particularly this part:

"One who ranges along the land or water line of any country with the design of aiding in the subversion of its laws challenges that country to enforce its laws and assumes the risk of his own mistakes and action of wind and tide and all the forces of nature. * * *

"Thus the defendants aided and abetted the persons to whom they sold in selling the whiskey in the United States contrary to its laws. * * *

"The defendants being under arrest in the United States, it makes no difference that they were outside the jurisdiction when by aiding and abetting they become principals in crime committed in the United States." [45]

But there is another complete answer to the contentions of the defendants. These offenses can be fairly said to have been committed by them upon American ships upon the high seas. The transportation of liquor is a crime. Can it be said that the delivery by the mother ship to the smaller vessel is not aiding and assisting that crime? If so, and there seems no escape from it, all who assist are principals.

But a crime committed within any state must be tried within that state; yet, a crime not committed within any state may be tried at such place as Congress may be law have directed—Const., Art. 382—6th Am. Rev. Stat. 730: "The trial of all offenses committed upon the high seas or elsewhere, out of the jurisdiction of any particular State of District, shall be in the District where the offender is found, or into which he is first brought."

In the brief, however, it is said that the crime is committed beyond our territorial limits, and therefore beyond the jurisdiction of this Court.

It is, of course, elementary, that where a crime is committed partly in one jurisdiction and partly in another, the venue may be laid in either place.

A dramatic illustration of that may be found in Lord Macaulay's account of the trial of the Seven Bishops: also reported in 12 State Trials, 183. In that case, the seven bishops were charged with having published a seditious libel against the king. When brought to trial, it appeared, when the matter first came before the jury that as a matter of fact, the libel was written outside the county of Middlesex. As the trial went on, however, Lord Sunderland was produced as a witness and testified that while the libel was written outside the county of Middlesex, it was presented to the king in London. It was held that jurisdiction was in either place. [46]

So, if money obtained by false pretenses is sent by letter at the request of the accused, the crime is committed both where the letter is posted and where it is received. Regina vs. Jones, 1 Den. 551.

A case in our own Supreme Court everyone will remember is People vs. Botkin, 132 Cal. 232. That case was one in which the defendant had mailed in San Francisco, certain poison candy, sent to persons in New Jersey and from eating which, they died. It was held that jurisdiction could be had either in the place where the candy was sent or where the persons died from eating it.

So, where property is stolen in one county and removed to another by the thief, venue may be laid in either county. 2 Russel on Crime, 6th Edition, 285.

So, it is well-settled that a person who procures the commission of an offense, commits the offense in the place where the act is done, the commission of which he has procured, although he himself never was in that place. Rex. vs. Johnson, 7 East. 65.

These defendants, moreover, are charged with conspiracy. Conspiracy may be tried in the place where the conspirators agreed to the wrongful act, which is the object of the conspiracy; or in any jurisdiction where one of the overt acts is committed. Rex vs. Brisac, 4 East. 164. And is again settled by this case of Latham vs. United States.

Of course, no one would desire that ships at sea should be generally subject to search by any foreign power. The facts of our own history, which readily occur to anyone, would negative this. The celebrated passages of Thomas Carlyle in "Frederick the Great," with reference to Jenkins' ear, kept in cotton for eight years "with a kind of ursine piety or other dumb feeling," and finally produced in Parliament to the awakening of war, come as read-

ily to mind. [47] But a general search on the high seas is a very different thing from a reasonable search at a reasonable distance from shore, to prevent and punish foreigners from a violation of our laws, and assistance to our own citizens in violating them.

I conclude, therefore:

(1) The seizure of the vessel was not in contravention of the law of nations, but in strict accord with the treaty with Great Britain.

(2) Her officers and crew were apprehended in the violation of the laws of the United States.

(3) Being so engaged, the Court of the District into which they were brought has jurisdiction of the cause.

(4) The evidence, having been lawfully secured, cannot be suppressed or returned.

Let the motions be denied and the demurrers overruled.

[Endorsed]: Filed Jan. 8, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [48]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 15,914.

THE UNITED STATES OF AMERICA

vs.

FORD, et al.

We the Jury, find as to the defendants at the bar as follows:

Jack Allen—Guilty, Charles Horace Belanger—Guilty, R. Bruce—Not Guilty, A. Cavanaugh—Not Guilty, J. Evelyn—Guilty, George Ford—Guilty, R. Gardiner—Not Guilty, R. Gisborne—Not Guilty, C. Grant—Not Guilty, Geo. Harris—Guilty, W. Hastie—Not Guilty, B. James—Not Guilty, J. H. Mason—Guilty, J. McCluskie—Not Guilty, E. McKenzie—Guilty, Thos. J. McClellland—Not Guilty, F. McLeod—Not Guilty, J. McQueen—Not Guilty, H. McVey—Not Guilty, Carl Neilsen—Guilty, Emelio Pensotti—Guilty, J. Y. Phillips—Not Guilty, Vincent Quartararo—Guilty, [49] Max Ripstein—Not Guilty,——Not Guilty, E. Sargent—Not Guilty, R. C. Shields—Not Guilty, F. W. Taylor—Not Guilty, F. H. Thibodeau—Not Guilty, G. Winterburn—Not Guilty.

THOS. N. NORRIS,
Foreman.

[Endorsed]: Filed at 9 o'clock P. M. April 3d, 1925. Walter B. Maling, Clerk. By A. C. Aurich, Deputy Clerk. [50]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

Before: Hon. JOHN S. PARTRIDGE, Judge.

No. 15,914.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEORGE FORD, et al.
Defendants.

MOTION FOR NEW TRIAL (GEORGE FORD, GEORGE HARRIS AND J. EVELYN).

Now come the defendants George Ford, George Harris and J. Evelyn, in the above-entitled action, and jointly and severally move the Court to set aside and vacate the verdict heretofore rendered herein, on the following grounds:

1. That the verdict is against the law.

2. That the said verdict is against the evidence.

3. That the said verdict is not supported by the evidence.

4. That the Court misdirected the jury in matters of law.

5. That the indictment in said action does not state facts sufficient to constitute a public offense as against these moving defendants, or either of them.

6. That the Court erred in denying the motion

of these defendants, and each of them, to suppress the evidence made prior to the trial.

7. Errors of law occurring at the trial—in this, to wit: That the Court erred in admitting in evidence, over the objection and exception of the defendants, property, [51] information and writing seized from the Steamer "Quadra," said objection being made upon the grounds, among others, that said evidence was in violation of the 4th and 5th amendments to the Constitution of the United States, and upon the further ground that its use as evidence against these defendants, and each of them, over their objection would be in violation of the 4th and 5th Amendments to the Constitution of the United States. That the Court erred in admitting in evidence testimony as to the speed of the "C-55," and to which ruling defendants duly excepted.

8. That said Court had no jurisdiction of the subject matter of the acts and conduct of these moving defendants, and each of them.

9. That said Court had no jurisdiction of the persons of these defendants, or either of them.

10. That the Court erred in denying the motion of defendants to quash the indictment in the above-entitled action.

Dated: this 3d day of April, 1925.

KENNETH M. GREEN,
HAROLD C. FAULKNER,
Attorneys for Defendants, George Ford, George Harris & J. Evelyn.

[Endorsed]: Due service and receipt of a copy of the within motion for new trial is hereby admitted this 10th day of April, 1925.

STERLING CARR,
Attorney for Plaintiff.

Filed Apr. 10, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [52]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

Before: Hon. JOHN S. PARTRIDGE, Judge.

No. 15,914.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEORGE FORD et al.,
Defendants.

MOTION FOR NEW TRIAL (VINCENT QUARTARARO).

Now comes the defendant Vincent Quartararo, in the above-entitled action, and moves the Court to set aside and vacate the verdict heretofore rendered herein, on the following grounds:

1. That the verdict is against the law.
2. That the said verdict is against the evidence.
3. That the said verdict is not supported by the evidence.

4. That the Court misdirected the jury in matters of law.

5. That the indictment in said action does not state facts sufficient to constitute a public offense as against this moving defendant.

6. That said Court had no jurisdiction of the subject matter of the said offense.

7. That the Court erred in overruling the demurrer of defendant to the indictment, and to which ruling defendant duly excepted.

8. Errors of law occurring at the trial—in this, to wit: That the Court erred in admitting in evidence, over the objection and exception of the defendant, property, information [53] and writing seized from the steamer "Quadra," said objection being made upon the grounds, among others, that said evidence was in violation of the 4th and 5th Amendments to the Constitution of the United States, and upon the further ground that its use as evidence against this defendant, over his objection, would be in violation of the 4th and 5th Amendments to the Constitution of the United States. That the Court erred in admitting in evidence, over the objection of the defendant, testimony as to the speed of the vessel "C–55," and to which ruling defendant excepted.

9. That the Court erred in reopening the case of the prosecution after the taking of evidence on behalf of prosecution an defendants *and* closed.

10. That the Court erred in admitting in evidence the telegram of date June 24, 1924.

11. That the Court erred in admitting in evidence

certain bank notes and currency bills, over the objection of defendant.

12. That the Court erred in admitting evidence of claimed transactions of defendant and other witnesses with ships other than the "Quadra."

13. That the Court erred in denying the motion of defendant to quash the indictment in the above-entitled action.

Dated: this 3d day of April, 1925.

NATHAN C. COGHLAN,
Attorney for Defendant Vincent Quartararo.

[Endorsed]: Due service and receipt of a copy of the within motion for new trial is hereby admitted this —— day of April, 1925.

STERLING CARR,
Attorney for Plaintiff.

Filed Apr. 10, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [54]

In the Southern Division of the United States District Court in and for the Northern District of California, First Division.

Before: Hon. JOHN S. PARTRIDGE, Judge.

No. 15,914.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEORGE FORD et al.,
Defendants.

MOTION FOR NEW TRIAL (CHARLES HORACE BELANGER).

Now comes the defendant Charles Horace Belanger, in the above-entitled action, and moves the Court to set aside and vacate the verdict heretofore rendered herein, on the following grounds:

1. That the verdict is against the law.

2. That the said verdict is against the evidence.

3. That the said verdict is not supported by the evidence.

4. That the Court misdirected the jury in matters of law.

5. That the indictment in said action does not state facts sufficient to constitute a public offense as against this moving defendant.

6. That the Court erred in denying the motion of this defendant to suppress the evidence made prior to the trial.

7. Errors of law occurring at the trial—in this, to wit: That the Court erred in admitting in evidence, over the objection and exception of the defendant, property, information and writing seized from the steamer "Quadra," said objection being made upon the grounds, among others, that said evidence was in violation of the 4th and 5th Amendments to the Constitution of the United States, and [55] upon the further ground that its use as evidence against this defendant over his objection would be in violation of the 4th and 5th Amendments to the Constitution of the United States. That the

Court erred in admitting in evidence, and over the objection of the defendant, testimony as to the speed of the vessel "C–55," and to which ruling defendant excepted.

8. That said Court had no jurisdiction of the subject matter of the acts and conduct of this moving defendant.

9. That the Court erred in reopening the case of the prosecution after the taking of evidence on behalf of prosecution and defendants *and* closed.

10. That the Court erred in admitting in evidence the telegram of date June 24, 1924.

11. That the Court erred in denying the motion of defendant to quash the indictment in the above-entitled action.

12. That the Court erred in admitting in evidence certain currency and bills over the objection of defendant.

13. That the Court erred in admitting in evidence transactions of defendant and other witnesses with ships other than the "Quadra."

Dated: this 3d day of April, 1925.

KENNETH M. GREEN,
HAROLD C. FAULKNER,
Attorneys for Defendant Charles Horace Belanger.

[Endorsed]: Due service and receipt of a copy of the within motion for new trial is hereby admitted this —— day of April, 1925.

STERLING CARR,
Attorney for Plaintiff.

Filed Apr. 10, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [56]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

Before: Hon. JOHN S. PARTRIDGE, Judge.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE FORD et al.,

Defendants.

MOTION IN ARREST OF JUDGMENT (GEORGE FORD, GEORGE HARRIS AND J. EVELYN).

Now come the defendants George Ford, George Harris and J. Evelyn and move to arrest the judgment on the verdict herein, on the following grounds:

1. That the Court has no jurisdiction of the subject matter of the acts and conduct of these defendants or of the offense claimed against them.

2. That the Court has no jurisdiction of the persons of these moving defendants, or either of them.

3. That the indictment in said action does not state facts sufficient to constitute cause of action or to state a public offense against these moving defendants, or either of them.

4. That the indictment in said action does not show, nor attempt to show, what offense these moving defendants, or either of them, are claimed to

have committed, and more particularly in this: That said indictment attempts to allege conspiracy to import liquor into the United States contrary to law, without in any wise indicating the law concerning which the importation is contrary to.

5. That the Court is without power, under the [57] treaty of May, 1924, between the United States and Great Britain, to impose sentence or judgment upon these moving defendants.

6. That the Court is without power to punish the acts and conduct of these moving defendants, or either of them.

7. That all acts, transactions, and conduct of these moving defendants occurred beyond the territorial jurisdiction of the United States.

8. That Sec. 37 of the Criminal Code has no application beyond the territorial limits of the United States.

9. That the Tariff Act of 1922 and the National Prohibition have not, nor has either of them, application beyond the territorial limits of the United States.

10. That the conspiracy charged in the indictment never existed within territorial limits of the United States.

11. No overt act set forth in the indictment was proven.

12. No overt act was shown to have been committed pursuant to alleged conspiracy.

13. No conspiracy was shown.

WHEREFORE, defendants, and each of them, pray that judgment be arrested.

Dated this 3d day of April, 1925.

KENNETH M. GREEN,
HAROLD C. FAULKNER,
Attorneys for Defendants, George Ford, George Harris, and J. Evelyn. [58]

[Endorsed]: Due service and receipt of a copy of the within motion in arrest of judgment is hereby admitted this 10th day of April, 1925.

STERLING CARR,
Attorney for Plaintiff

Filed Apr. 10, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [59]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

Before Hon. JOHN S. PARTRIDGE, Judge.

No. 15,914.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEORGE FORD et al.,
Defendants.

MOTION IN ARREST OF JUDGMENT (VINCENT QUARTARARO).

Now comes the defendant Vincent Quartararo and moves to arrest the judgment on the verdict herein, on the following grounds:

1. That the Court has no jurisdiction of the subject matter of the acts and conduct of the defendant or of the offense claimed against him.

2. That the indictment in said action does not state facts sufficient to constitute cause of action or to state a public offense against this moving defendant.

3. That the indictment in said action does not show, nor attempt to show, what offense this moving defendant is claimed to have committed, and more particularly in this: That said indictment attempts to allege conspiracy to import liquor into the United States contrary to law, without in any wise indicating the law concerning which the importation is contrary to.

4. That the Court is without power, under the Treaty of May, 1924, between the United States and Great Britain, to impose any punishment upon this moving defendant. [60]

5. That the Court is without power to punish the acts and conduct of this moving defendant.

6. That the conspiracy charged in the indictment never existed within territorial limits of the United States.

7. No overt act set forth in the indictment was proven.

8. No overt act was shown to have been committed pursuant to alleged conspiracy.

9. No conspiracy was shown.

WHEREFORE, defendant prays that judgment be arrested.

Dated this 3d day of April, 1925.

NATHAN C. COGHLAN,
Attorney for Defendant Vincent Quartararo.

[Endorsed]: Due service and receipt of a copy of the within motion in arrest of judgment is hereby admitted this 10th day of April, 1925.

STERLING CARR,
Attorney for Plaintiff.

Filed Apr. 10, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [61]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

Before: Hon. JOHN S. PARTRIDGE, Judge.

No. 15,914.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEORGE FORD et al.,
Defendants.

MOTION IN ARREST OF JUDGMENT (CHARLES HORACE BELANGER).

Now comes the defendant Charles Horace Belanger and moves to arrest the judgment on the verdict herein, on the following grounds:

1. That the Court has no jurisdiction of the

subject matter of the acts and conduct of the defendant or of the offense claimed against him.

2. That the indictment in said action does not state facts sufficient to constitute cause of action against this moving defendant.

3. That the indictment in said action does not show, nor attempt to show, what offense this moving defendant is claimed to have committed, and more particularly in this: That said indictment attempts to allege conspiracy to import liquor into the United States contrary to law, without in any wise indicating the law concerning which the importation is contrary to.

4. That the Court is without power, under the treaty between the United States and Great Britain, to impose any punishment upon this moving defendant.

5. That the Court is without power to punish the [62] acts and conduct of this moving defendant.

6. That the conspiracy charged in the indictment never existed within territorial limits of the United States.

7. No overt act set forth in the indictment was proven.

8. No overt act was shown to have been committed pursuant to alleged conspiracy.

9. No conspiracy was shown.

WHEREFORE, defendant prays that judgment be arrested.

Dated this 3d day of April, 1925.

KENNETH M. GREEN,
HAROLD C. FAULKNER,
Attorneys for Defendant, Charles Horace Belanger.

[Endorsed]: Due service and receipt of a copy of the within motion in arrest of judgment is hereby admitted this 10th day of April, 1925.

STERLING CARR,
Attorney for Plaintiff.

Filed Apr. 10, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [63]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the city and county of San Francisco, on Friday, the 3d day of April, in the year of our Lord one thousand nine hundred and twenty-five. Present: The Honorable JOHN S. PARTRIDGE.

No. 15,914.

UNITED STATES OF AMERICA
vs.
GEO. FORD et al.

MINUTES OF COURT—APRIL 3, 1925—SENTENCE.

This case came on regularly this day for pronouncing of judgment as to defendants Marino

Crivello and Salvatore Crivello, whereupon the Court ordered said matter continued to April 4, 1925.

The defendants on trial each being present in person and with their respective attorneys, the Government's attorneys, and the jury being present, trial was resumed.

Case was argued by Mr. Coghlan and Mr. Gillis.

Thereupon Court instructed jury and, as part thereof, instructed jury to return verdict of Not Guilty as to the defendant Max Ripstein. Said jury, after being so instructed, retired at 3:55 P. M. to deliberate upon a verdict and subsequently returned into court at 4:35 P. M. for further instructions and again retired at 4:40 P. M. and again returned at 6:10 P. M. for further instructions, again retired at 6:30 P. M. and returned into court at 8:45 P. M. for further instructions, again retired at 8:47 P. M. and returned at 9 P. M. Roll was called and all twelve (12) jurors answered to their names and were found to be present, and, in answer to question of the Court, stated they had agreed upon a verdict and presented a written verdict, which the Court [64] ordered filed and recorded upon the minutes of this court and which verdict is as follows:

"We, the Jury, find as to the defendants at the bar as follows: Jack Allen—Guilty, Charles Horace Belanger—Guilty, R. Bruce—Not Guilty, A. Cavanaugh—Not Guilty, J. Evelyn—Guilty, George Ford—Guilty, R. Gardiner—Not Guilty, R. Gisborne—Not Guilty, C. Grant—Not Guilty, Geo.

Harris—Guilty, W. Hastie—Not Guilty, B. James —Not Guilty, J. H. Mason—Guilty, J. McCluskie— Not Guilty, E. McKenzie—Guilty, Thos. J. McClelland—Not Guilty, F. McLeod—Not Guilty, J. McQueen,—Not Guilty, H. McVey—Not Guilty, Carl Neilsen—Guilty, Emelio Pensotti—Guilty, J. Y. Phillips—Not Guilty, Vincent Quartararo— Guilty, Max Ripstein—Not Guilty, E. Sargent— Not Guilty, R. C. Shiels—Not Guilty, F. W. Taylor —Not Guilty, F. H. Thibodeau—Not Guilty, G. Winterburn—Not Guilty.

THOS. N. NORRIS,
Foreman."

ORDERED that jurors be excused until April 7, 1925, at 10 A. M.

Ordered that R. Bruce, A. Cavanaugh, R. Gardiner, R. Gisborne, C. Grant, W. Hastie, B. James, J. McCluskie, Thos. J. McClelland, F. McLeod, J. McQueen, H. McVey, J. Y. Phillips, Max Ripstein, E. Sargent, R. C. Shiels, F. W. Taylor, F. H. Thibodeau and G. Winterburn be discharged from custody and that they go hence without day, and that their bonds be and the same are hereby exonerated.

Defendants Jack Allen, Charles Horace Belanger, J. Evelyn, George Ford, Geo. Harris, J. H. Mason, E. McKenzie, Carl Neilsen, Emelio Pensotti, Vincent Quartararo were called for judgment. The attorneys for the respective defendants then made motions for new trial and motions in arrest of judgment as to each of said defendants. After [65] hearing counsel for both parties, ordered

that said motions be and the same are hereby denied. No cause now appearing why judgment should not now be pronounced, ordered that defendant Jack Allen be imprisoned for the period of eight (8) months in the county jail, county of San Francisco, California; that defendant Charles Horace Belanger be imprisoned for the period of two (2) years in the U. S. Penitentiary at Leavenworth, Kansas, and pay a fine in sum of $10,000.00, or, in default thereof, defendant be further imprisoned until fine is paid or he be otherwise discharged by due process of law; that defendant J. Evelyn be imprisoned for the period of ten (10) months in the county jail, county of San Francisco, State of California; that defendant George Ford be imprisoned for the period of two (2) years in the United States Penitentiary at Leavenworth, Kansas, and pay a fine in the sum of $1,000.00, or, in default thereof, defendant be further imprisoned until fine is paid or he be otherwise discharged by due process of law; that defendant George Harris be imprisoned for period of thirteen (13) months in United *in United* States Penitentiary at Leavenworth, Kansas; that defendant J. H. Mason pay fine in sum of $500.00, or, in default thereof, defendant be imprisoned in the county jail, county of San Francisco, State of California, until said fine is paid or he be otherwise discharged by due process of law. Ordered that defendant J. H. Mason have 1 day stay of execution. Ordered that defendant E. McKenzie be imprisoned for period of eight (8) months in the county jail, county of

Marin, State of California; that defendant Carl Neilsen be imprisoned for period of eight (8) months in the county jail, county of San Francisco, State of California; that defendant Emilio Pensotti be imprisoned for the period of [66] eight (8) months in the county jail, county of Marin, State of California; that defendant Vincent Quartararo be imprisoned for the period of two (2) years in the United States Penitentiary at Leavenworth, Kansas, and that he pay a fine in the sum of $10,000.00, or, in default thereof, defendant be further imprisoned until fine is paid or he be otherwise discharged by due process of law.

Further ordered that the clerk issue commitments and that all defendants (except J. H. Mason) be taken into custody.

Entered page 280, Vol. 65, Book of Minutes. [67]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,914.

Convicted of violating Section 37, C. C. U. S.

THE UNITED STATES OF AMERICA

vs.

JACK ALLEN et al.

JUDGMENT ON VERDICT OF GUILTY.

Kenneth C. Gillis, Esq., Special Assistant United States Attorney and the defendants with their

counsel came into court. The defendants were duly informed by the Court of the nature of the indictment filed on the 20th day of November, 1924, charging them with the crime of violating Section 37, C. C. U. S, of their arraignment and plea of not guilty; of their trial and the verdict of the jury on the 3d day of April, 1925, to wit:

"We, the jury find as to the defendants at the bar as follows:

Jack Allen—Guilty, Charles Horace Belanger—Guilty, R. Bruce—Not Guilty, A. Cavanaugh—Not Guilty, J. Evelyn—Guilty, George Ford—Guilty, R. Gardiner—Not Guilty, R. Gisborne—Not Guilty, C. Grant—Not Guilty, Geo. Harris—Guilty, W. Hastie—Not Guilty, [68] B. James—Not Guilty, J. H. Mason—Guilty, J. McCluskie—Not Guilty, E. McKenzie—Guilty, Thos. J. McClelland—Not Guilty, F. McLeod—Not Guilty, J. McQueen—Not Guilty, H. McVey—Not Guilty, Carl Neilsen—Guilty, Emelio Pensotti—Guilty, J. Y. Phillips—Not Guilty, Vincent Quartararo—Guilty, Max Ripstein—Not Guilty, E. Sargent—Not Guilty, R. C. Shiels—Not Guilty, F. W. Taylor—Not Guilty, F. H. Thibodeau—Not Guilty, G. Winterburn—Not Guilty.

THOS. N. NORRIS,
Foreman.

The defendants were then asked if they had any legal cause to show why judgment should not be entered herein and no sufficient cause being shown or appearing to the Court, and the Court having denied a motion for new trial and a motion in

arrest of judgment; thereupon the Court rendered its judgment; THAT WHEREAS, the said Jack Allen, Chas. H. Belanger, J. Evelyn, George Ford, Geo. Harris, J. H. Mason, E. McKenzie, Carl Neilsen, Emelio Pennsotti, and Vincent Quartararo having been duly convicted in this court of the crime of violating Section 37, C. C. U. S. [69]

IT IS THEREFORE, ORDERED AND ADJUDGED that the said

JACK ALLEN,

be imprisoned for the period of eight (8) months in the County Jail, County of San Francisco, California.

CHARLES H. BELANGER,

be imprisoned for the period of two (2) years in the United States Penitentiary at Leavenworth, Kansas, and pay a fine in the sum of Ten Thousand ($10,000.00) Dollars; further ordered that in default of the payment of said fine that said defendant be further imprisoned until said fine be paid or until he be otherwise discharged in due course of law.

J. EVELYN,

be imprisoned for the period of Ten (10) months in the county jail, county of San Francisco, California.

GEORGE FORD,

be imprisoned for the period of two (2) years in the United States Penitentiary at Leavenworth, Kansas, and pay a fine in the sum of One Thousand ($1,000.00) Dollars; further ordered that in default of the payment of said fine that said defend-

ant be further imprisoned until said fine be paid or until he be otherwise discharged in due course of law.

GEO. HARRIS,
be imprisoned for the period of Thirteen (13) months in the United States Penitentiary at Leavenworth, Kansas.

J. H. MASON,
pay a fine in the sum of Five Hundred ($500.00) Dollars; further ordered that in default of the payment of said fine that said defendant be imprisoned in the county jail, county of San Francisco, California, until said fine be paid or until he be otherwise discharged in due course of law. [70]

E. McKENZIE,
be imprisoned for the period of eight(8) months in the county jail, county of Marin County, California.

CARL NEILSEN,
be imprisoned for the period of eight (8) months in the county jail, county of San Francisco, California.

EMELIO PENSOTTI,
be imprisoned for the period of eight (8) months in the county jail, county of Marin, California.

VINCENT QUARTARARO,
be imprisoned for the period of two (2) years in the United States Penitentiary at Leavenworth, Kansas; and pay a fine in the sum of Ten Thousand ($10.000.00) Dollars, further ordered that in de-

fault of the payment of said fine that said defendant be further imprisoned until said fine be paid or until he be otherwise discharged in due course of law.

Judgment entered this 3d day of April, 1925.

WALTER B. MALING,
Clerk.

By C. W. Calbreath,
Deputy Clerk.

Entered in Vol. 18, Judg. and Decrees at, page 357. [71]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

Before: Hon. JOHN S. PARTRIDGE, Judge.

No. 15,914.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEORGE FORD et al.,
Defendants.

BILL OF EXCEPTIONS OF DEFENDANTS GEORGE FORD, GEORGE HARRIS, J. EVELYN, CHARLES HORACE BELANGER AND VINCENT QUARTARARO.

The above-entitled cause came on for trial on Tuesday, March 10, 1925, at 10 o'clock A. M. of

said day in the city and county of San Francisco, State of California, before the above-entitled court, Hon. John S. Partridge, Judge thereof, presiding therein; and, a jury having been empaneled and sworn to try the case, thereafter continuing from day to day until the conclusion of said trial, the following proceedings among others were had, testimony and evidence, oral and documentary, was introduced on behalf of the United States and on behalf of the defendants as follows:

Mr. FAULKNER.—On behalf of the members of the crew and the officers of the "Quadra" who are named in indictment 15,914, as the first 23 defendants therein named, and who are named in each succeeding indictment on the calendar this morning, before the jury is empaneled and on behalf of these defendants collectively and individually we object to the jurisdiction of the Court as to the [72] persons of these defendants so that the record will distinctly show that their appearance at this time is not a waiver of protest of jurisdiction. That goes to all the defendants, I take it, without naming them, your Honor?

The COURT.—Yes, and the objection is overruled.

Mr. GREEN.—We note an exception.

The COURT.—Call the jury.

(Rep. Tr., p. 6.)

The COURT.—Make your statement, Mr. Gillis.

Mr. GILLIS.—May it please the Court and Gentlemen of the venire:

The case that is presented to you this morning

involves what is commonly known as the "Quadra" case, and is a conspiracy indictment returned by the Grand Jury in this district against some 60 odd defendants. There are present before you in this indictment 23 members which constitute the officers and members of the crew of the ship "Quadra", which is a ship of British Registry, coming from Vancouver to San Francisco; and, as set out in the indictment, she was seized by the coast guard officers shortly or a little way beyond the Farallone Islands on October 12 of last year, the ship being loaded completely with liquor; in addition to these men there are two men who were seized the night preceding that, on October 11, 1924, in one of the small motor-boats out in San Francisco Bay as having made contact with the "Quadra."

In addition to that there are two men who were seized upon a small motor-boat at the time the "Quadra" was seized, which was joined onto the "Quadra" taking cargo at that particular time.

In addition to these men there are two men who are directors of the Consolidated Exportation Limited Company, the company which owned the cargo of the "Quadra"; and in addition one other man by the name of Quartararo who was apprehended in San Francisco [73] as the representative of this company here.

The indictment is a conspiracy indictment alleging that these individuals formed a conspiracy for the purpose of violating the laws of the United States, namely, the Tariff Law which prohibits the

importation of certain goods into the United States, and also the National Prohibition Act which prohibits the transportation or importation of liquor into this country.

I think, Gentlemen, that that in brief sets out to you the matters sufficiently so that you may have an understanding as to the general charge that is made against these particular defendants who are on trial here this morning.

The COURT.—Can you give the names of the attorneys for the defendants? You had better state the names of all of the attorneys.

Mr. GILLIS.—I don't think I know as to their specific representations. Perhaps the attorneys had better make a record of that themselves.

Mr. O'CONNOR.—I appear for the defendants McKenzie and Pensotti. Frank J. Hennessy appears for the defendants Allen and Neilsen. Nathan Coghlan appears for the defendant Vincent Quartararo. Louis Crowley and Isaac Pacht appear for the defendant Ripstein. Mr. Green and Mr. Faulkner appear for the officers and members of the crew of the "Quadra" and for Charles Horace Belanger. I think that covers the appearances.

(Rep. Tr., pp. 7-9.)

Mr. COGHLAN.—At this time, if the Court please, with great deference to the rule of the Court, the defendant Quartararo requests the privilege of personally interrogating each juror. We predicate this general demand upon the fact that of course a defendant at this bar is entitled to a

jury of his own selection; we believe [74] that there is a constitutional right involved in that.

The COURT.—Mr. Coghlan, no lesser person than the Chief Justice of the United States, and the Committee of which he is the head, examined that subject and it seems to me their ruling upon it is sufficient.

Mr. COGHLAN.—I have a great deal of respect also for that authority but the request is denied, is it?

The COURT.—Yes, the motion is denied.

Mr. COGHLAN.—We note an exception.

Mr. FAULKNER.—The same request on behalf of the members of the crew and the captain and Mr. Bellanger and all of the defendants?

The COURT.—The same ruling.

Mr. FAULKNER.—Exception.

(Rep. Tr., pp. 14-15.)

The following proceedings occurred concerning the examination of jurors, to which exception was taken:

Question (By the COURT). Any member of your immediate family belong to any civic or religious body or organization having among its principles the enforcement or repeal of the United States Prohibition Act?

Mr. DICK (a Juror).—My wife belongs to the W. C. T. U.

The COURT.—Is there anything in that fact that would in anywise prevent you from being a fair juror in this case?

Mr. DICK.—No.

Mr. MORSE (a Juror).—My wife does likewise.

The COURT.—Is there anything in that fact that would in anywise prevent you from being a fair juror in this case?

Mr. MORSE.—No, sir.

(Rep. Tr., p. 16.)

Mr. GREEN.—I would like to ask Mr. Morse if it is not a fact that it would require less evidence to satisfy his mind of the [75] guilt of the defendants in a prohibition case than it would in any other kind of a criminal case.

The COURT.—Mr. Morse, would it require any less evidence to convince your mind in a case where the prohibition law was involved than in any other kind of a criminal proceeding?

Mr. MORSE.—I think not.

The COURT.—You understand, do you not,—all of you gentlemen—that the Government must establish the guilt of these defendants to a moral certainty and beyond a reasonable doubt, and if you are so instructed you will all require that kind of evidence, will you?

Any other questions?

Mr. GREEN.—I would like to ask Mr. Morse if it is not a fact that he would give more credence to the testimony of officers for the Government than he would to defendants charged with the violation of the National Prohibition Act, or a conspiracy to violate that law, all other things being equal.

The COURT.—Yes, other things being equal.

Mr. MORSE.—Not intentionally.

Mr. GREEN.—Would he do it unintentionally?

Mr. MORSE.—That is a question that I could not answer.

The COURT.—Of course, Mr. Green, that involves a psychological fallacy, if you know what that is. No man could say what he would do unintentionally.

Mr. GREEN.—I understand that Mr. Morse said that he had decided views on the subject of prohibition; then might I ask what those decided views are?

The COURT.—I don't think he said so. Did you, Mr. Morse?

Mr. MORSE.—I said I had very pronounced views.

The COURT.—Well, which is it, for or against?

Mr. MORSE.—For. [76]

The COURT.—In spite of that, is your state of mind such that where a man or men are charged with a conspiracy to violate that law and other laws that you could give them a perfectly fair trial and require the Government to establish their guilt to a moral certainty and beyond a reasonable doubt before you would convict them?

Mr. MORSE.—I believe I could.

Mr. GREEN.—If the Court please, I interpose a challenge for cause. I do not think that a man who has pronounced views—very pronounced views, as the talisman says, on the subject of prohibition enforcement, in favor of prohibition enforcement, can give the defendants a fair and impartial trial.

The COURT.—The challenge is denied. It is the Government's challenge.

Mr. O'CONNOR.—On behalf of the defendants McKenzie and Pensotti I have some questions to propound.

The COURT.—All right, what are they?

Mr. FAULKNER.—May the record show an exception on behalf of the defendants to your Honor's order denying the challenge?

The record further shows that all peremptory challenges of the defendants were exhausted before the jury was sworn and empanneled.

(Rep. Tr., pp. 16–18.)

Mr. FAULKNER.—If your Honor please, before the introduction of any evidence on behalf of the prosecution, we desire to renew our motion concerning the jurisdiction of the persons and jurisdiction of the subject matter, and particularly point out to the Court that the statutes which these men are accused of violating have been repealed by the treaty between Great Britain and the United States, and thereby depriving the court of jurisdiction of the subject matter.

The COURT.—The objection is overruled.

Mr. FAULKNER.—Exception.

The COURT.—Go ahead. [77]

OPENING STATEMENT FOR THE GOVERNMENT.

Mr. GILLIS.—May it please the Court, and Gentlemen of the Jury: You heard me state briefly my opening address to the general venire

the general nature of this case. I will take up briefly now, and only briefly, the evidence that we expect to produce here, by witnesses from the witness-stand, to establish the case on behalf of the Government.

You will hear certain names mentioned as we go through the trial of this case, and perhaps, at the very outset, I had better call your attention to some of these names, in order that you may have a clear understanding of who are before you at the present time.

The first three names in the indictment, Mr. George Ford, as the evidence will show, is the captain of the ship "Quadra" that the evidence will show was seized by the Government; Mr. George Harris is the first officer, and Mr. Evelyn is the second officer of the "Quadra."

Then there some 20 odd defendants who constitute the remaining members of the crew of that ship, the "Quadra."

Then we come to two names, Jack Allen and Carl Neilsen. These two men, the evidence will show, were apprehended on the "903–B," a small motor-boat, the night previous to the seizure of the "Quadra," and, as the evidence will show, was making contact with the "Quadra."

The two names following them are Mr. Penzotti and Mr. McKenzie. Those two men were in charge of and aboard of the boat "C–55," that was apprehended by the coast guard at the same time the "Quadra" was apprehended; she was alongside of the "Quadra."

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We then come down to two names, Mr. Belanger and Mr. Ripstein. These two men were directors of the Consolidated Exporters, Limited, of Vancouver; and the remaining defendant, Mr. Quartararo, who was one of the agents in San Francisco, and handled the liquor as it was landed from the boat here in this city. There are 16 names in [78] the indictment—the remaining individuals have not been apprehended—the most of them, as the evidence will show, constitute officers and directors of the Consolidated Exporters Limited, of Vancouver.

Now, the particular charge, Gentlemen, that is made against these individuals is not a charge of a direct violation of the prohibition law, or of the Tariff Act, but is a charge of conspiracy, and the evidence that the Government will present will show you that there was a combination of individuals who are on trial here before you, and that as a part of that combination, in September of 1924, the ship "Quadra," owned by the Canadian Mexican Shipping Company, Ltd., of Vancouver, was loaded with a full cargo of liquor; that she contained no other cargo at all; and the cargo was owned, as the evidence will show, by the Consolidated Exporters Limited, of Vancouver; that in September, the "Quadra" sailed from Vancouver, and, coming south, she took up a position opposite the Golden Gate, and sailed up and down in front of the Gate, and at some distance from the Farallones, for many days; during that time she had unloaded 1,000, 2,000, or 3,000 cases of liquor that

was taken over her side while she was sailing back and forth just outside of the Golden Gate. Then on October 12, 1924, the coast guard cutter "Shawnee," in command of Captain Howell, observed the "Quadra" within a very short distance of the North Farallone Islands, which is a United States possession; that he immediately overhauled the "Quadra," caused her to stop, and, at the same time, forced the "C–55," which was alongside of the "Quadra," and which, when the "Shawnee" approached started out toward the sea, to come back; that when the "C–55" did come back to the "Shawnee" and tie up alongside of her, they found her loaded with liquor; that the "Quadra" was thereupon seized and brought into port, and her cargo stored in the warehouse here by the Government Customs Officers; that there was something [79] like 9,000 cases of liquor still aboard the "Quadra" at that time.

As I have told you, the night before there was one other boat, the "903–B," in charge of two of the defendants here, that was picked up right in the bay of San Francisco by one of the small coast guard patrol boats. The evidence will show that the "903–B," as well as the "C–55," the "Marconi," which is another boat, a Californian, and several other small motor-boats registered in this city, made contact with the "Quadra" and took liquor from her and brought it into the port of San Francisco; and we will show you, as a part of that system, that the idividuals in San Francisco who were a part of this conspiracy, many of

whom have not been apprehended, many of whom whose names we do not know, used a system of $1 bills to secure their cargo; that these bills were clipped in half, one-half being delivered to the captain or supercargo of the "Quadra," and the other half going out in the small motor-boat that went to secure the particular load of cargo called for, these $1 bills having upon their back the list and order for the specific amount, and the kind of liquor that was to be secured from the "Quadra," that when they got out there the bills were matched up, and when they were matched up the cargo was delivered to the particular motor-boat, and then they brought their cargo right in to San Francisco.

I think, Gentlemen, that constitutes the case that the Government is to present, and that it will develop from the evidence that is presented from the witness-stand.

(Rep. Tr., pp. 36–39.)

It was stipulated between counsel for the Government and counsel for the defendants, at the suggestion of and order by the Court, that objections made and exceptions taken during the course of the trial would be deemed to be objections on behalf of all defendants jointly and severally, and that exceptions would be deemed [80] exceptions on behalf of all defendants jointly and severally, all objections made and exceptions taken to inure to the joint and several benefit of each defendant.

TESTIMONY OF C. F. HOWELL, FOR THE UNITED STATES.

C. F. HOWELL, called as a witness on behalf of the United States, having been first duly sworn, testified as follows:

Direct Examination by Mr. GILLIS.

I am a Lieutenant Commander in the United States Coast Guard, in command of the cutter "Shawnee," and have been a member of the coast guard for nearly 26 years and hold an unlimited master's license.

I was in command of the cutter "Shawnee" on October 12, 1924. On the morning of October 12 I was near the Cordell Banks, which is about 45 miles out in the ocean with reference to Fort Point. When in that neighborhood I saw a vessel, which afterwards proved to be the "Quadra." At the time I first saw the "Quadra" I was in a position about 11 miles from the position in which we captured the "Quadra," and between that position and the south end of the Cordell Banks.

When first sighted there was no way of telling whether or not the "Quadra" was in motion, but I was hove to at that time, not in motion myself, and after a lapse of a material time I noted the "Quadra" on the same approximate bearing as that in which I originally sighted her, which indicated that she was hove to. I then steamed down to investigate, making my course take me toward the "Quadra." As I approached the "Quadra" it

(Testimony of C. F. Howell.)

came fuller into view and I saw her in motion. I was about 4 or 5 miles, approximately, away when I noticed she was in motion. She was headed in shore toward the beach, and we noted her in motion, when he got under way, turned, [81] and headed offshore. As he steamed offshore I hauled my course to the westward in order to head him off. I shifted my course two or three times in order to make the courses converge, but continued in the direction of the "Quadra." While I was in motion towards the "Quadra" I gave a signal to it. When I figured we were close enough for the "Quadra" to hear I blew four whistles, which is a customs signals that you want to *speak* a vessel. She responded to that signal by stopping immediately. I then ranged the "Shawnee" down toward her. When about 150 yards or so distant I stopped my engines.

When I got down reasonably close to her I was approaching from the starboard side and as I drew near I slowed down and went under her stern and rounded to on her port quarter. The "Quadra" was headed offshore to the westward at that time. As I rounded the port side of the "Quadra" I saw the motor-boat "C–55," which is about 45 or 50 feet long and run by a gas-engine. She was steaming from the side of the "Quadra," headed offshore, at a distance from the "Quadra" of about 200 yards. I gave a signal to the small boat of four blasts on the whistle, to which it did not respond.

(Testimony of C. F. Howell.)

I then fired a shot across his bow, and the small boat responded to it by rounding to, and it came alongside of the "Shawnee." I remember the crew of the "C–55" were a man named Pensotti and a man named McKenzie, who, I believe, are defendants in this action. I looked on board the "C–55."

Q. What did you see on board the "C–55"?

Mr. FAULKNER.—We object to the question on the ground it is an effort on the part of the prosecution to prove an overt act prior to the establishment of the conspiracy; that is an objection which goes to the benefit of all officers and members of the crew, and is supplemented by an objection on behalf of Mr. Belanger to the effect that it is not binding upon him, hearsay, and the proper foundation has not been laid. [82]

The COURT.—The objection is overruled.

Mr. FAULKNER.—Exception.

A. A number of sacks, filled, with the word "Corby" painted on them and a partly filled case of bottles.

(Rep. Tr., pp. 44, 45.)

Mr. GILLIS.—Q. Did you see the bottles?

A. Yes.

Q. Did you see what kind of bottles they were?

Mr. FAULKNER.—We desire, then, to object to it on the grounds heretofore stated in behalf of the officers and members of the crew, and Mr. Belanger, as to the question propounded by the District Attorney.

The COURT.—Overruled.

(Testimony of C. F. Howell.)

Mr. FAULKNER.—Exception.

(Rep. Tr., pp. 45, 46.)

A. They were, I would say, beer bottles in appearance. I could not tell whether they had anything in them.

I sent a party aboard to search the "C-55" and take the crew off her and send them aboard the "Shawnee" and substitute our own men for the people who were previously manning her, and made her fast alongside of the "Shawnee." At that time I was about 100 yards from the "Quadra" on the port side.

I had a conversation with the captain of the "Quadra" at that time. I did not know who the captain was then, but know now that it is George Ford.

Q. What was the conversation that you had at first with the captain?

Mr. HENNESSY.—We object to that on behalf of the defendants Allen and Neilsen. It is hearsay, not in their presence, immaterial, irrelevant and incompetent.

The COURT.—Overruled.

Mr. HENNESSY.—Exception.

Mr. FAULKNER.—The same objection as to Belanger. I make the same objection, supplemented by the further objection that the [83] proper foundation has not been laid as to the defendant Belanger.

The COURT.—Do you mean the foundation as to whether it was voluntary or not?

(Testimony of C. F. Howell.)

Mr. FAULKNER.—As to whether a conspiracy has been shown, the ability of Captain Ford to bind Mr. Belanger, and the additional grounds that have been stated by Mr. Hennessy.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

(Rep. Tr. pp. 47, 48.)

Mr. COGHLAN.—On behalf of the defendant Quartararo, and I imagine on behalf of several other of the defendants, the proper foundation will not then have been laid, because the *corpus delicti* must be proved; you cannot prove a conspiracy by the mere conversation or admissions.

The COURT.—Not at all.

Mr. GILLIS.—I do not expect to.

The COURT.— But, of course, that, again, Mr. Coghlan, is a question of the order of proof, and it is impossible for these cases to be tried at all if you are going to do that.

Mr. COGHLAN.—I understand that, but only in order to preserve the proper exception leading up to the time when your Honor might entertain a motion to strike out the conversation—

The COURT.—You may have your exception.

Mr. O'CONNOR.—On behalf of the defendants McKenzie and Pensotti, I object to any conversation on the ground it is an attempt on the part of the Government to establish a conspiracy by the statements and declarations of a defendant.

Mr. GILLIS.—I will withdraw that question.

(Rep. Tr., p. 50.)

Mr. GILLIS.—Q. Captain, now, before having

(Testimony of C. F. Howell.)

any conversation with reference to the "Quadra," or her cargo, or anything that pertained [84] to that, or pertained to your position aboard the "Shawnee," or that pertained to the crew in any manner, or any defendant in this case, did you make any promises to Captain Ford, or did you make any threats to him, or use any coercion to get him to make a statement to you of any kind, shape or form? A. I did not.

Q. Now, did you have a conversation with Captain Ford at that time? A. I did.

Mr. FAULKNER.—I renew on the objection on behalf of the defendant Belanger that it is immaterial, irrelevant and incompetent, the proper foundation has not been laid as to him, and renew the motion on behalf of Captain Ford and the members of the crew that this is a conversation alleged to have occurred beyond the jurisdiction of the United States.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

(Rep. Tr., pp. 50, 51.)

Mr. GREEN.—Might I cross-examine Captain Howell on the question of coercion and threats?

The COURT.—Yes.

Mr. GREEN.—Q. Captain Howell, at this time is it not a fact that you called *Captain Howell's* attention to the fact that you had a gun on the "Shawnee"?

The COURT.—You may answer.

(Testimony of C. F. Howell.)

Mr. GILLIS.—He should ask about the facts, what he did, and what he said.

The COURT.—That is about what the question amounts to, I think, Mr. Gillis.

A. I do not quite understand your question; if you will, please straighten it out—before any conversation occurred, or after.

The COURT.—Before one started.

A. Before one, I did not. [85]

Mr. GREEN.—You did not call his attention to the fact that you had the power to exert force upon him at that time?

A. Not at that time, no.

Q. Not at that time, but later? A. Later.

Q. Later you did? A. Yes.

Q. During the conversation?

A. Not at any time at the beginning of the conversation.

Q. Not at any time at the beginning, but during the course of the conversation you did that very thing, did you not, called Captain Ford's attention to the fact that you had a gun on the "Shawnee," and that you would use force if necessary?

A. I did.

(Rep. Tr., pp. 51, 52.)

A. I informed Captain Ford that he was too far in, and that I would take him to San Francisco. Captain Ford replied that he was fourteen miles off, and I asked him "Off what"? He replied, "Off Point Reyes." I said, "You have probably forgotten the Farallones," to which he made no

(Testimony of C. F. Howell.)

particular rejoinder. He said, "I am on the high seas, will you send over and examine my papers?" I said, "I will." He said, "I have done nothing illegal."

(Rep. Tr., p. 52.)

This was before I boarded. I was still on the "Shawnee." I said, "You folks probably consider this a sporting proposition, so you should be sports enough when you are caught to come in." He replied, "I am a good sport, and wish I could say as much for you. My word is just as good as yours." I replied, "Your word is just as good as mine when you get into court, but out here it is not." There I had to stop, because that is when I told him I had a gun aboard.

The COURT.—Now, Mr. Gillis, I did not mean to rule that he could not give the rest of the conversation, so you may ask him, so that counsel can raise the point. [86]

Mr. GILLIS.—Q. Now, Captain Howell, from that point on you had additional conversation with Captain Ford, did you? A. Yes.

Q. At that time? A. Yes.

Q. And what was that conversation?

Mr. GREEN.—Objected to on the ground that no proper foundation has been laid.

The COURT.—Do you wish to ask any other questions on the question of foundation?

Mr. GREEN.—Q. It is a fact, Captain, that at this time you called Captain Ford's attention to

(Testimony of C. F. Howell.)

the fact that you had a gun on the "Shawnee," and that you would use force if necessary? A. Yes.

The COURT.—Q. Just what did you say, Captain?

A. Captain Ford said he had competent navigators in the "Quadra," and his word was just as good as mine. I replied, "When you get into court your word is just as good as mine, but out here it is not, because I have a gun, and I will use it if it is necessary to take you in."

Q. What did he say to that?

A. He said he would not steam in. I was asking him if he would steam in. He said he would not steam in, "You will have to put a prize crew aboard"; and I said, "Very well," and put it aboard.

Q. Then this subsequent converation you had was after you were aboard; is that the idea?

A. No.

Q. You have narrated all the conversation you had then, have you?

A. He asked me to send over and examine his papers, and the conversation I was about to mention was with reference to his refusal to steam in. That was in answer to Mr. Gillis' question.

The COURT.—The objection is overruled.

Mr. HENNESSY.—I desire to make an objection to the conversation on behalf of Allen and Neilsen, on the ground that it calls for hearsay testimony, immaterial, irrelevant and incompetent, and no [87] proper foundation laid.

(Testimony of C. F. Howell.)

The COURT.—Overruled.

Mr. HENNESSY.—Exception.

Mr. FAULKNER.—The same objection on behalf of Mr. Belanger.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

Mr. COGHLAN.—I make the same objection, and also that it appears that there was a denial of any complicity in the commission of an offense.

The COURT.—Then it does not do you any harm.

Mr. COGHLAN.—And, therefore there is no foundation.

The COURT.—Overruled.

Mr. COGHLAN.—Exception.

(Rep. Tr., pp. 54, 55.)

Prior to having the latter part of this conversation I sent Ensign Osterman and Boatswain Patterson aboard the "Quadra." It was while they were aboard the "Quadra" that I had further conversation with Captain Ford with reference to steaming in.

Q. (By Mr. GILLIS.) Relate that conversation now.

Mr. COGHLAN.—We object to that on behalf of the defendant Quartararo on the ground that no proper foundation has been laid.

The COURT.—Objection overruled.

Mr. COGHLAN.—Exception.

Mr. FAULKNER.—The same objection as to the defendant Belanger.

(Testimony of C. F. Howell.)

The COURT.—The same ruling.

Mr. FAULKNER.—Exception.

A. Mr. Osterman and Mr. Patterson were sent over to examine the papers of the "Quadra" and in response to a suggestion from Captain Ford when these gentlemen reached the "Quadra"—

Mr. GILLIS.—No conversation between them that you did not [88] hear.

A. The conversation was addressed to me; they hailed me and said Captain Ford refused to show any papers or give any information until he had conferred with counsel.

(Rep. Tr., pp. 55, 56.)

The COURT.—If you, Gentlemen, could get together and agree on some one of yourselves to make the objections, we would save lots of paper and a lot of time.

Mr. CROWLEY.—I made that suggestion a few moments ago, if it might be handled that way, with all due respect to your Honor, that if an objection is made, that that objection may be deemed to be made on behalf of all of the defendants, unless otherwise stated.

The COURT.—Well, all right, that will do.

Mr. CROWLEY.—I would like to have that understanding and stipulation.

Mr. FAULKNER.—Would not this be a solution of it: It is quite apparent that everything that occurred between Captain Howell and the steamer "Quadra" was outside of the presence of the defendants Ripstein, Belanger, Quartararo,

(Testimony of C. F. Howell.)

Allen and Neilsen. Now, then, may it be stipulated that all evidence that goes in as to the situation between Captain Howell and the "Quadra" be deemed objected to for every reason as to those defendants, that the Court has overruled it, and that we have noted an exception?

The COURT.—All right; let that stipulation be entered of record.

(Rep. Tr., p. 57.)

The COURT.—The Captain had stated that his two officers hailed him and told him that the captain of the "Quadra" declined to allow him to see the papers until he had consulted counsel. That is as far as he had got.

Mr. GILLIS.—Q. Now continue with the conversation, Captain. [89]

A. I directed them to take charge of the "Quadra." I renewed my request on Captain Ford to steam in. Upon his refusal I told him I would put a line aboard and tow him in, and I did.

That was the full conversation with him at that time. I put a line aboard by means of a dory that had taken Osterman and Patterson aboard, got the end of the line aboard the "Quadra" and sent two men who were in the dory to help get the line, as the "Quadra's" crew refused to do anything. So the two officers and the two enlisted men made the line fast. After the line was fast we got under way and came and brought the "Quadra" to San

(Testimony of C. F. Howell.)

Francisco and her cargo as it was. The ship and cargo were turned over to the customs officials.

I recognize the chart you ask me to examine. It is the chart we were using October 12 when we seized the "Quadra." It is the chart of the "Shawnee" and belongs to it, and was used by myself on the "Shawnee" on October 12 and is the only one used.

Mr. GILLIS.—I ask that the chart be introduced in evidence and marked Government's Exhibit No. 1.

When we arrived on the port side of the "Quadra" we took bearings and knew what position we were in with reference to the North Farallones and Point Reyes. The bearings were taken at that time by one of the ship's officers, Ensign Morse, and myself. Ensign Morse reported the bearings to me and I checked them. I checked them in this way: He used a pelorus in taking the bearings and I checked them by compass. He was on top of the wheel-house, and I was down on the lower bridge.

Q. What was the result of those bearings?

Mr. CROWLEY.—The same objection that we have heretofore made, and by that I mean that lengthy objection I stated in the record.

The COURT.—Objection overruled. [90]

Mr. CROWLEY.—Exception.

Mr. FAULKNER.—The same objection and exception.

(Testimony of C. F. Howell.)

Mr. COGHLAN.—The same objection on behalf of the defendant Quartararo.

Overruled. Exception taken.

A. The bearing places the vessel 5.7 miles from the most northern of the North Farallone Islands.

Mr. GILLIS.—What was the bearing off Point Reyes?

Mr. COGHLAN.—Same objection on behalf of the defendant Quartararo.

Overruled. Exception taken.

A. The bearing off Point Reyes was 40 degrees true.

Mr. GILLIS.—What was the bearing off the North Farallones?

Mr. CROWLEY.—The same objection.

The COURT.—Objection overruled.

Mr. CROWLEY.—Exception.

A. 113 degrees true.

(Rep. Tr., pp. 60, 61.)

I did something else at that time with reference to determining the position the "Quadra" and the "Shawnee" were in at the time we were on the port side of the "Quadra." I took soundings. I will explain how the sounding machine operates.

A sounding machine consists of a reel of fine piano wire on the end of which a heavy weight is made fast; the line leans over a sheave over the stern of the vessel to keep it clear; attached to the weight is a tube; the gear used in connection with the sounding machine consists of a brass tube closed at one end. The tubes that we use are

(Testimony of C. F. Howell.)

ground glass on the inside so that when they are wet they are transparent. The end is closed by a rubber cap. The glass tube is placed for protection in a brass tube with the open end down; by releasing the brake on the reel the weight carries to the bottom. [91] As the wire is paying out a slight strain is kept on it with a brass hook by this means it can readily be established when the weight hits the bottom. This fact also becomes apparent because of the fact that the line slacks up. The brake is set on the reel, and the dial attached to the reel is red, and the wire is then reeled in. The revolutions of the dial and the fathoms are the same up to 80 fathoms; when the weight is brought up, the tube is taken out and placed in a scale properly graduated and with the tube end still up, to prevent water from running down in the tube. The depth of water is indicated by the line of demarcation between transparency and translucency, and is read directly from the scale.

(Rep. Tr., pp. 61, 62.)

The dial you read from is on the side of the reel that goes out. It shows the number of revolutions that the reel has made. On the back of the machine there is a legend giving the corrections for certain depths. The first correction to be applied is at 80 fathoms.

When the location of the "Quadra" testified to, alongside on the port side of the "Quadra," I caused the sounding to be made with this machine

(Testimony of C. F. Howell.)

which was aboard the "Shawnee." I have seen the glass tube in a measure before and recognize it. It is the glass tube and the scale that were used in taking the sounding at that time.

Mr. GILLIS.—We offer this in evidence.

Mr. FAULKNER.—The same objection on behalf of the defendant Belanger.

The COURT.—The objections are all overruled.

Mr. O'CONNOR.—Exception.

(Rep. Tr., pp. 62, 63.)

When the tube was brought up from the water it was delivered to me and I read it.

Q. (By Mr. GILLIS). What did it read at that time?

Mr. CROWLEY.—The same objection as heretofore made. [92]

Mr. FAULKNER.—The same objection on behalf of Belanger.

Mr. O'CONNOR.—The same objection on behalf of McKenzie and Pensotti.

The COURT.—Objection overruled.

Mr. O'CONNOR.—Exception.

A. Forty-four fathoms.

Mr. GILLIS.—Q. What is this tape that is an the scale, Captain?

A. I directed that the tube be immediately sealed in the scale, with the edge of the tape marking the reading, for the reason that after the tube dries out there is no longer the line between transparency and translucency.

(Testimony of C. F. Howell.)

The COURT.—Q. The depth or extent to which the watetr reaches up depends upon the pressure?

A. Yes.

Q. And the pressure depends upon the depth?

A. Yes.

(Rep. Tr., p. 63.)

I did not personally read the dial on the side of the sounding machine. The dial reading was reported to me at approximately the same time that I actually saw the tube. I could not say whether it was just before or just after, but it was approximately the same time.

Q. What was that record?

Mr. CROWLEY.—The same objection, with the additional objection that it must be hearsay so far as my client is concerned.

The COURT.—You saw the dial and the tube both? A. No, sir. I did not see the dial.

Q. Some officer took that? A. Yes.

Q. The pressure tube is a check on the dial, is it?

A. It is just the reverse.

Q. The dial is a check on the pressure tube?

Q. Somebody else took the dial?

A. I was on the bridge. Of course, they could bring the tube to me, but could not bring the dial. [93] I stayed on the bridge.

The COURT.—I think you will have to prove that by somebody else, Mr. Gillis, if there is any question as to the number of fathoms of water.

Mr. GILLIS.—Very well, your Honor.

(Rep. Tr., pp. 63, 64.)

I sent one of my officers to take the cross bear-

(Testimony of C. F. Howell.)

ings and he reported it to have been taken by pelorus. I took the compass bearings myself and the bearings I have given there, that is, my northerly island of the Farallones and the Point Reyes bearings were bearings I took myself.

The COURT.—I think you will have to prove the other bearings by someone else, Mr. Gillis.

Mr. GILLIS.—Yes, your Honor.

(Here follows a detailed description of a pelorus.)

(Three pictures were then shown to the witness. The first, a picture of the pelorus on the "Shawnee" at the time the "Quadra" was seized, was offered in evidence and marked U. S. Exhibit 3.)

A picture of the compass on board the "Shawnee" on October 12, 1924, was also received in evidence.

The COURT.—What has the jury to do with these, Mr. Gillis? The jury is not concerned with the position of the ship.

Mr. GILLIS.—That is very true, your Honor. Perhaps it is only for the Court.

The COURT.—This evidence is for the Court only.

Mr. GILLIS.—That is very true.

The COURT.—The question as to the position of the ship will come up on that ruling. The jury has nothing to do with that.

Mr. GILLIS.—That is very true, your Honor.

(Rep. Tr., 67, 68.) [94]

The next photograph was a picture of the "Shaw-

(Testimony of C. F. Howell.)

nee" as she was on October 12, 1924, and in the same condition, except for the introduction of an aerial for a radio compass that subsequently has been put in, which picture was introduced as Government's exhibit next in order, viz., U. S. Exhibit 5.

Picture 5 represents the top of the wheel-house of the "Shawnee." There is no structure above that other than the spars and funnel.

The witness then pointed on the chart, Exhibit 1, the location of the "Quadra" and the "Shawnee" at the time the "Shawnee" pulled in around on the port side of the "Quadra," the point being right where certain lines cross. The witness testified that "the one in this direction represents the bearing of the lighthouse on Point Reyes, and the one in this direction represents the tangent to the northermost of the North Farallones." The witness drew a large circle showing the intersection. The chart shows at that particular point 44 fathoms.

This chart, Government's Exhibit 1, is a chart used by the Coast & Geodetic Survey Branch of the Government, and is Chart #5502, covering the California Coast from Point Arena to San Francisco. These charts are used by all American and most foreign vessels, and the small numbers marked on the chart represent the depth of the water in fathoms, unless they are in a dotted surface, in which case they are represented in feet.

The depth of water ascertained by our sounding

(Testimony of C. F. Howell.)

machine was the depth of water as shown by that chart at the point marked, and that corresponded with the position as fixed when we took our bearings off Point Reyes and the Farrallones where the two bearings intersected.

On the same day we brought in the "C–55" and she was [95] delivered to the customs authorities.

When McKenzie and Pensotti, who were on the "C–55," came aboard the "Shawnee" I had a conversation with them.

Q. What was that conversation?

Mr. FAULKNER.—The same objection on the ground it is immaterial, irrelevant and incompetent, hearsay as to the other defendants, and the proper foundation has not been laid.

Mr. COGHLAN.—The same objection and exception.

The COURT.—Was this conversation entirely voluntary? Did you make any threats against them at all? A. No.

Q. Did you make them any promises of any kind?

A. No.

Q. Did you attempt in anywise to intimidate them in order to make them talk? A. No.

The COURT.—The objection will be overruled. Of course, gentlemen, so far as the defendants other than those who made the statements are concerned, they will be fully protected by the instructions.

Mr. CROWLEY.—We note an exception.

(Testimony of C. F. Howell.)

A. McKenzie made the remark that the cargo he had in the "C–55" was going to the "Quadra," and not coming from her. He also said that the beer in the "C–55" belonged to him personally and that I had spoiled his appetite for it by firing a shot at him. He claimed the cargo came from the "Coal Harbor."

The COURT.—The "Coal Harbor" is the name of another vessel?

A. The name of another vessel, yes. I asked him why he attempted to escape when I blew to him to stop, and he replied that he thought that I was going to be busy enough with the "Quadra" so he could get away.

Mr. GILLIS.—That is all. You may cross-examine.

(Rep. Tr., p. 71.) [96]

Cross-examination.

(Questions by Mr. O'CONNOR.)

The conversation between myself and the defendants McKenzie and Pensotti took place after they had been brought aboard, about 20 minutes after they had been brought aboard I would say. It was before we started to tow the "Quadra." I do not believe anyone else was present besides Pensotti, McKenzie and myself. No members of the crew were present as far as I remember. The conversation took place on the forward deck, alongside of the anchor engine. In substance the first thing I said to McKenzie and Pensotti was to ask them if they had their lunch and why they did

(Testimony of C. F. Howell.)

not go below and get something to eat. They said they did not want any lunch. As far as I remember the conversation I have just repeated is all that was said.

It is not a fact that I said to the defendants at that time, "Tough luck, fellows," or words to that effect; at least not as far as I remember. I would say that I did not say it.

There was no discussion between defendants McKenzie and Pensotti and me at that time with regard to the position of myself and the steamer "Quadra." The defendant McKenzie at that time did not say that the steamer "Quadra" was far beyond twelve miles from the North Farallones, and the defendant Pensotti did not say the same thing to me in similar words.

I did not at that time say to defendant McKenzie or Pensotti that the steamer "Quadra" was approximately 13½ miles off Point Reyes, but that she was less than 12 miles off the North Farallones.

I did not at that time say to defendant McKenzie or Pensotti that the captain of the "Quadra" evidently forgot the Farallones; that he was judging his distance merely from Point Reyes. I did not at that time indicate to defendant McKenzie or Pensotti the distance the "Quadra" was off the northernmost point of the [97] Farallones.

I did not at any time from the time the defendants McKenzie and Pensotti came aboard the "Shawnee" until they were discharged at San Francisco indicate to them what I thought was

(Testimony of C. F. Howell.)
the distance of the "Quadra" from the north point of the Farallones.

After I had this conversation with McKenzie and Pensotti I did nothing with them. I don't know where they went. They were permitted to go anywhere on the "Shawnee" within reason.

I did not at any time say to the defendants Pensotti and McKenzie that the "Quadra" was five miles off the north point of the North Farallones at the time of seizure.

I did not at any time while they were aboard the "Shawnee" say to McKenzie and Pensotti that the "Quadra" was 9½ miles off the north point of the North Farallones.

I did not at any time while they were aboard the "Shawnee" say that the "Quadra" was 10½ miles off the north point of the Farallones.

In other words, I did not have three distinct conversations with the defendants while they were aboard the "Shawnee" at different times. To my recollection I did not have any conversation with them after the first conversation. I will say I did not have such a conversation. I could be mistaken, but I am testifying that I am not. That is my best recollection. I will now definitely say as a matter of fact that I had no conversation with either of these defendants other than the one I have testified to. I would not say I could not be mistaken about it.

McKenzie did not, while aboard the "Shawnee" on that day after the seizure of the "Quadra,"

(Testimony of C. F. Howell.)

say to me in substance as follows: "I am not much of a navigator, I am a dead reckoner, and the distance between where the 'Quadra' was seized and Point Reyes and the distance between where the 'Quadra' was seized and the north point of the [98] North Farallones is about the same," or words to that effect. Pensotti did not say that, either, and I am positive of that.

It is correct that there was no conversation at all other than the one conversation already testified to with regard to what they were doing as to transporting liquor to the "Quadra and in regard to the beer. That is the only conversation.

(Questions by Mr. GREEN.)

I came alongside of the "Quadra" about 11:50 A. M. My clocks were set at mean time, 120th meridian. My geographical position at the time I seized the "Quadra" was 5.7 miles off the northernmost of the North Farallones and in a direction about due west magnetic. This position was determined by bearings. I took bearings by compass. The compass had been corrected about three months before, I think. Correction was done right here in San Francisco Bay by me. No certified compass adjuster did it. The deviation on the compass was one degree. I have a card on it. It is in the wheel-house of the "Shawnee" and I can produce a copy of it in court to-morrow. I cannot produce the original because it is the property of the Government and is required in the navigation of the vessel. The vessel is not on duty now. If

(Testimony of C. F. Howell.)

I may change that answer, I will bring you the original, because I have just had a lot of overhauling, and the first thing I have to do when I get under way is to compensate again. I will bring the original, because the original is no longer correct, probably; I have to compensate again before I go to sea.

I do not remember my latitude and longitude at the time I seized the "Quadra." The only reference to that is with reference to this chart. These bearings on the chart were made at the time the "Quadra" was seized; the bearings that are plotted there on the chart were made by Ensign Morse and checked by me.

At daybreak on the 12th of October, 1924, we were over in [99] the vicinity of Drake's Bay. From there we went offshore out around Cordell Banks. I set a course generally westward, but I did not maintain it for any material time. I was cruising around and got foul of a vessel out there chasing whales and I did not want to interfere with his business, so we slowed down and varied our course, stopped, drifted, and that sort of business. I was in the vicinity of the boat chasing whales I should say three-quarters of an hour on the morning of October 12. The whaler and myself were in a position with regard to the North Farallones and Point Reyes about west magnetic, or a little south of that, from Point Reyes; North Farallones would bear roughly about southeast.

(Testimony of C. F. Howell.)

Q. Could you see the North Farallones from that position?

The COURT.—From what position—where the whaler was?

Mr. GREEN.—Where the whaler was working.

A. I don't remember looking for them.

I have been there many times. In the weather we had I believe you could see them from that position. With respect to visibility and clearness the day was very good. It was one day out of a thousand. I never saw a finer day on the Pacific.

The northern one of the North Farallone Islands is 118 feet high and the middle one 155 feet high, that is, the middle one of the North Farallones. The third one is just a few feet. On a clear day from a height of 21 feet you can see an object 155 feet high, I think, about 24 miles. The dip of the horizon at a distance of about ten miles is about 40 feet. That is just my recollection of the business. I do not make any effort to keep that in mind, because it is all in tables and you can look it up when you need it. I would not say it was nearer 20 feet. Whatever the table says, that is what the answer would be. If I really wanted to know I would look in the tables. I mentioned 21 feet, but about 24 feet is the height of the eye on the bridge of the "Shawnee." [100]

Q. From what distance can you see the surf at the bottom of the North Farallones?

A. Generally speaking, or that day?

(Testimony of C. F. Howell.)

Q. That day. A. I do not think there was any. There was not enough of a swell so you would pay any attention to it; it was what we speak of as a flat, calm day; there is a little wash, undoubtedly. There is always enough surf to make a wash at the bottom of the jagged rocks out there.

Q. And from the distance at which you say you seized the "Quadra" could you see the surf at the bottom of the North Farallones rocks?

A. No; I did not look.

From my recollection regarding these waters and these rocks, and as a man of experience, I would say that the surf could not be observed from the bridge of the "Shawnee" at the bottom of the North Farallone rocks from a distance of 5.7 miles. You cannot observe it at that distance. The reason is that it is not visible that far.

Q. Do you mean it dipped down the horizon, the curve of the earth hid it?

A. No, there is so little of it I would judge you would not see any break on the Farallones in the weather that we had out there, certainly not more than two miles.

Q. You could not see the white line of the surf at a distance of more than two miles.

A. That is my answer.

(Rep. Tr., pp. 79, 80.)

In my conversation with Captain Ford, the master of the "Quadra," as I approached him, he used a megaphone in that conversation. We were about 100 yards apart. He invited me aboard the

(Testimony of C. F. Howell.)

"Quadra" to check his bearings in regard to his position. He said he had taken horizontal angles and asked me to come over and check his position. He did not say what object of land he had taken the horizontal angles off. I recognize a horizontal angle as being a very definite means of obtaining a ship's position, if the known [101] points of land are visible. It is not more definite than close compass bearings. It is the same thing; save for the possible errors of the compass it is the same thing. It is the angular distance between objects, but the cross bearings are taken with the eye, and the horizontal angle is taken with the sextant.

Q. So you would say, would you not, in the final analysis that perhaps the horizontal angle taken by sextant was a little bit more definite and true?

A. The deciding element in that, I believe, would be the distance of the objects observed. There would be circumstances under which a horizontal angle would be possibly the best means obtainable in fixing the position. There would be other circumstances in which distance would be a considerable element in which your horizontal angle would be of comparatively little value. It would also obtain when your horizontal line is taken from two objects that are very similar in appearance to each other, so that you might have difficulty in recognizing the direct and the reflected image; but theoretically the method is beyond any question a very excellent one.

(Rep. Tr., p. 82.)

There might be difficulty in regard to taking

(Testimony of C. F. Howell.)

your horizontal angle off Point Reyes and any of the Farallones in this particular: It would depend on which way he took the angle. If he puts the big reflector image on top of the little direct image he would cover it up so he would not have any very sharp lines. It would hide it. But if he took it the other way there is no reason why he should not get a good one. In my opinion from a distance of say 15 or 20 miles, with objects such as the Farallone Islands and Point Reyes, and on a day such as the day in question, a horizontal angle would be a pretty definite means of obtaining a ship's position.

It was reported to me that Captain Ford mentioned a vertical angle; I cannot be sure whether he said it to me or whether an officer [102] that I sent over reported it to me, but I know that he had mentioned taking a vertical angle. The question of whether, at a distance of say 20 miles, a vertical angle off Point Reyes would be quite a definite means of obtaining a ship's position on a day such as the day in question would depend largely on circumstances. The angle at the ship, taking a vertical angle off Point Reyes at that distance would be quite acute. The height of Point Reyes is 597 feet, and that is a material height in taking a vertical angle.

As far as I know the only means of taking cross-compass bearings is with the pelorus, as one of my assistants did, or with the compass itself, as I did.

I have taken head-on bearings. That is done

(Testimony of C. F. Howell.)

by heading your ship for the object and noting your course. That is not a more definite way of taking them than the method I used. It is not equally as definite. It is not as accurate. I do not think it is as accurate, because you are at the mercy of the man steering the ship instead of the man in command of her.

Q. But the ship being steady and being brought head-on to the object, there can be no more definite way of taking a bearing than that, can there, Captain?

A. The whole thing is the same situation, you want to get the bearing of a given object; there is probably no particular discussion as to how to get it. The answer might seem foolish, but the way to get it is simply to get it, it doesn't make much difference how you do it.

Q. It doesn't matter how you do it?

A. Absolutely not. You assume you are doing it correctly in every case. If you do it correctly, if you do it accurately, the method does not make any difference; if you do not do it accurately the method does not help you a bit.

Q. Then, as I understand it, and I think you do also, I think we are agreed on it, the head-on method is just as good as the other as long as the bearings are taken correctly? A. Yes.

(Rep. Tr., p. 82.) [103]

The head-on method of taking bearings is not an unusual one. It is very often done when it does not entail any material change of course. For in-

(Testimony of C. F. Howell.)

stance, if a vessel were laid to, with just a little way or maybe no way at all, only a few revolutions of the propeller would give her way enough to swing the head in order to take the head-on bearings.

Captain Ford did not say anything to me about taking an ex-meridian altitude of the sun at that time.

Q. An ex-meridian taken at that time, Captain, would have been a definite way of checking the ship's position, would it not?

A. Not in the presence of six objects.

Q. But you would not use the six objects, of course, in that regard, but as a means of checking on your bearings on the six objects?

A. It is axiomatic at sea that a good sight is likely to vary as much as three miles; cross bearings should not vary as much as 300 yards. So that, comparatively speaking, if you take cross bearings and feel that you have taken them right there is no use doing anything else.

(Rep. Tr., pp. 84, 85.)

If you took an ex-meridian at that time and checked it out to the same position you would call it a check on your bearings. I would say it would be accidental if you got it. The length of time it takes to take an ex-meridian depends entirely on the ability of the worker and the taker. I would say it would take an average deep sea navigator, for instance, a man who had commanded deep sea vessels, about twenty minutes to take and work up

(Testimony of C. F. Howell.)

an ex-meridian; that would depend also somewhat on the time from noon; if it is very close to noon he would have less calculations to make than if he were some fairly considerable distance from noon. Based on my experience, I think it is possible to fake an ex-meridian or any sight that was ever taken. In my opinion it would take twenty minutes for the [104] average mariner to take and work up an ex-meridian altitude. I imagine it would take the average navigator several hours to take one and work it backwards.

At the time I had the conversation with Captain Ford he seemed very positive of his distance and he invited me on board to check it. I did not see fit to do that, as I had my own position and I was lying practically alongside of him. The officers that I sent on board the "Quadra" were competent to verify the position. From their report they were invited to the bridge by Captain Ford and invited to take his position, that is my official knowledge. They did not do so. Had I told them to it would have been a very easy matter for them to have done so.

The tow-line was made fast to the "Quadra" at 12:35 and the tow commenced shortly after that, almost immediately after the line was properly fast. We used a 6" hawser to tow the "Quadra." When we started towing we steered a course about 90, East magnetic. I will point it out on the chart.

Q. I will mark that "towing course."

The COURT.—Mr. Reporter, the witness has re-

(Testimony of C. F. Howell.)

ferred to a line on the chart which Mr. Green has marked "towing course."

(Rep. Tr., p. 87.)

We followed the channel between the North Farallone and the Middle Farallone. We altered our course when the northward of the North Farallones was abeam. We altered our course to 68.

Q. Which line on the chart I have marked "towing course continued"; that line I have so marked, Captain, is the continuation of your course to San Francisco after you altered it?

A. No, we did not continue that course all the way to San Francisco. As a matter of fact, the course we made good put us to the southward of the Light Ship and we went on up to the northward again. There is a curve out there.

(Rep. Tr., p. 87.) [105]

We again altered our course right alongside the light ship—to the south of the light ship. This was the course we steered, but it was not the course we made good. The current carried us down. The current out there is about south southeast, magnetic, and the velocity of the current varies from three-quarters of a knot to a knot and a half. At the time we seized the "Quadra" and started towing I figured it would be about midway between those two limits—about a knot. That would not help the speed of the "Quadra" tow. That was setting practically right across the course, at right angles to the course. That would send us down to the southward. It would not send us

(Testimony of C. F. Howell.)

ahead any. At the time we commenced towing the "Quadra" the revolutions of the engine were 35. We increased it in about ten minutes to 50 and continued at 50 throughout the tow into San Francisco.

(Wednesday, March 11, 1925.)

Cross-examination of C. F. HOWELL (Resumed).

The maximum speed of the "Shawnee" is 12 knots. Her indicated horse-power is about 1400 and, I believe, her nominal horse-power is 1100. She has triple engines, which make 126 revolutions at full speed. The normal cruising speed varies, of course, with conditions; I should say it would average 9½. The standing order to the engine-room is that, unless otherwise ordered, the speed will be 100 revolutions, which gives her a speed of about 9½ knots; 65 revolutions give her about 6; 50 revolutions give her about 4.8. I do not know the dimensions of the propeller of the "Shawnee." She has not a towing wheel. She is not built for a tug. She is built for a coast guard cutter.

The "Shawnee" has, in fact, the lines, the power and the build of a tug-boat. I do not know it to be a fact that she is considered to be the most powerful tug in San Francisco Bay. I reckon [106] it is the general reputation of the boat. The "Shawnee" is 149 feet in length, 29 feet beam, and about 11 feet depth of hold. I do not know the size of the "Quadra" in figures with any accuracy. Compared to the "Shawnee" she is longer, leaner, possibly about the same depth.

(Testimony of C. F. Howell.)

Her lines are finer. The reduction in the speed of the "Shawnee" when she has a tow of the size of the "Quadra" is one-third. The speed when we were making the tow of the "Quadra" under 50 revolutions was 3.2 miles an hour. I ascertained this by taking the bearing of Noonday Rock when it was abeam, and held that course, and took the bearing of the North Farallone when it was abeam, in the time of 59 minutes, and that is a distance of about 3.2 miles.

I di not know the pitch of the propeller of the "Shawnee." The percentage of slip on the propeller of the "Shawnee" when towing in that case was about 30%—33 per cent; that is, steaming with the tow; that is the normal slip plus the slip due to the tow. The normal slip is about 15%, I think. I did not tow a patent log at any time.

I corrected the compass of the "Shawnee" myself about three months prior to the seizure, or a little longer. It was on the 25th of May, 1924. There is no coefficient A on the compass. It is an element which goes to make up the deviation, which was one degree. That is not on all points of the compass. It is the maximum deviation. On a great many points there is not any deviation.

I brought with me this morning a card which is a copy, practically, of the deviation card that was then in use, because we are required to compensate the compass every six months and this compass was compensated on November 12. No change was made in the magnets and there was no change

(Testimony of C. F. Howell.)

found in the deviation, so that deviation card is the same as the one previously in use; that is, the compensation taken at the seizure of the "Quadra" showed no deviation and no change in the deviation. From the one we had in May there was no further compensation. We swung for deviation and [107] there was no change. We had to substitute a card, because our regulations require a new one every six months, so that our card for November was the same as the one for May.

Coefficient B is the component part of the magnetism of the vessel with a deviation of the compass caused by iron in the ship placed in a fore and aft direction relative to the compass. It is greatest on magnetic north and south.

Coefficient C on the compass is the error occasioned by location of iron in an athwartship position. It amounts to nothing on the north and is greatest on the east and west.

Coefficient D on the compass is the error occasioned by soft iron. It is nothing on all the cardinal points and greatest on the semi-cardinal.

In towing into San Francisco Bay I passed Fort Point three minutes after ten. It took 45 or 40 minutes to take the "Quadra" to where we left it.

With respect to whether I definitely told you that the North Farallone rocks could be seen from the position of that whaler on that morning, I told you I did not know whether they could be seen or not, I think, because I did not look for them.

Q. But I believe you said your opinion was that

(Testimony of C. F. Howell.)

from that distance on such a day they could be seen if they were looked for?

Mr. GILLIS.—I think the record will show what he said.

The COURT.—He said they could be seen on that day 24 miles.

(Rep. Tr., p. 95.)

I should say the position of the whaler was about 24 miles from the North Farallone rocks while we were with the whaler. I do not know the name of the whaling boat. I do not know whether it was the "Traveler." After I left the company of the whaling vessel I stood to the southward, under the counter of the "Principio." That vessel was in the vicinity of Cordell Banks. I know I was on the [108] Cordell Banks because the "Principio" was anchored on the Cordell Banks, and it is too deep to anchor around it. I do not remember the course I lay after I left the "Principio." I think I have a way of ascertaining that course. I altered the course between the Cordell Banks and where I seized the "Quadra" in a direction offshore. My course was not continuously offshore from the Cordell Banks to where I seized the "Quadra." The course from the Cordell Banks originally was directly for the vessel that turned out to be the "Quadra." As we approached that vessel she got under way, and I decided to chase her, and to shorten the distance as much as possible I would have to run in chasing her. I changed my course offshore to head her off, and I did that

(Testimony of C. F. Howell.)

a couple of times. By saying the "Quadra" was under way, I did not pay any particular attention to the speed she was making. I should say she was going quite slowly. She was barely moving. I do not know whether she was making any attempt to escape. She was headed inshore. Presumably when he saw me he headed offshore, so I assumed that was an attempt to escape from me. There was no other reason for his doing it. What I know is that he changed his course and swung his ship around. I should judge I was about 11 miles away from the "Quadra" when I first sighted her. I reckon that if the "Quadra" could be seen at that distance by me that the "Quadra" could have seen the "Shawnee." The only difference would be the difference in the color of the vessel; that might have a slight effect, but very little. We were white and yellow and they were black. Black would be easier to see. I do not remember when I lighted the lights on our vessel on the tow in. Lights are lighted on vessels at sundown. I do not remember when it became dark on the tow in. When it became dark we were between the North Farallones and the light ship, I do not know how far.

Q. Would you say that you were in quite close—well, not close, but that the South Farallone Lighthouse was about abeam when it became [109] dark, when the sun went down?

A. No. My opinion would be that the southeast Farallone was abaft the beam when the sun went down.

(Testimony of C. F. Howell.)

Q. Would you say how much?

A. No. I paid no particular attention to it.

Q. Don't you remember, Captain, that when you passed the lighthouse that the light was lighted in it? A. No.

Q. How far past it would you say you were when they lighted the lighthouse?

A. I did not see them when they lighted the lighthouse.

(Rep. Tr., p. 98.)

I did not pay any attention to the South Farallone lights; no attention at all. During all of the course of the tow I was on the bridge.

I do not know how old this sounding tube was that was used. The date of issue does not make any difference; it does not show on it. When we seized the "Quadra" we could not see Noonday Rock buoy, which has a height of about six feet. We were not practically on top of it. We were somewhere around three miles away from it. I have not a pair of dividers here. My recollection is that we were three miles from the Whistling buoy on Noonday Rock. The buoy shows on the chart. Sometimes you see it at that distance and sometimes you do not see it until you are practically on top of it. You do not ever see the rock itself; it has three fathoms of water on it. I do not know whether this was an ideal day to see it from a distance of three miles. In any event I did not see it. I did not correct my time prior to the seizure, but we get the tick on the radio every

(Testimony of C. F. Howell.)

day practically. Only one sounding was taken under my direction. My last detail of duty on those waters is just three years and two days. During that time I don't suppose I would average in the vicinity of the Farallones more than probably once a week. I have not been outside of them once a week during the last three years. Very frequently I go to the northward; almost as frequently [110] I go to the southward; and do not go outside the Farallones. I am familiar with their appearance. I can pretty well judge the distance I am from them by their appearance. I consider myself a pretty good judge of marine distances. On this day at a distance of 5.7 miles I reckon they would stand out pretty plainly. I did not notice any haze around them. I could see the middle rock of the North Farallones.

Q. I was out there one day last fall observing the ground on the islands myself; I would like to have you take a look at the photograph, Captain, and tell me about how far away you think those rocks are.

(Rep. Tr. p. 100.)

A. I have not the slightest idea. I do not recognize them and absolutely cannot recognize those as the North Farallone rocks. I am familiar with their shape. I do not recognize the photograph of the North Farallone rocks taken under your direction from a position west half south. I would not say it is not a picture of those rocks. If I assume this is a picture of the North

(Testimony of C. F. Howell.)

Farallone rocks, I could not give you the slightest idea how far off your picture had been taken.

Referring to the little picture taken with another camera, I could not give you the slightest idea of the distance from which the picture was taken from those rocks. As to saying it was ten miles, I would not say anything about it. I cannot tell from the appearance of those rocks and from how much of the rocks is showing how far it is.

I could tell approximately from looking at the rocks themselves about how far off they are.

Q. How can you tell that?

A. I cannot form an estimate based on perhaps ten miles of distance by perhaps less than an inch of water and a couple of little spots that I can hardly see.

Q. The outline of the rocks is quite clear there; at least it is [111] to me. A. All right, sir.

Q. Is it clear to you? A. No, sir.

The COURT.—What is the purpose of this, Mr. Green?

Mr. GREEN.—It is very material, your Honor, depending on the answer the witness gives.

The COURT.—Why it is material?

Mr. GREEN.—Because it was taken at a certain distance.

The COURT.—Well, you can prove that by your own witness. He says he cannot tell, and very evidently he cannot; nobody can tell it from

(Testimony of C. F. Howell.)

a photograph. Remember that this evidence is addressed to the Court. I could not tell how far that was off; it would be utterly impossible.

Mr. GREEN.—I think it would be very easy to tell.

The COURT.—You could not even make the slightest guess at it, how far it is, as shown by the photograph. You may prove that the ship was lying at a certain distance. You could not expect this witness or any other witness who was not there to take a picture of that kind and judge that distance; I cannot conceive of that being done by anybody. I think it is impossible.

Mr. GREEN.—I don't think it is impossible, your Honor. I was out there once, and I can tell it.

The COURT.—You can show it if you want to. It certainly does not impress me as being so. I don't say that you cannot prove it, of course; it may be that you can prove it.

Mr. GREEN.—I respectfully assign the remarks of the Court on this subject as misconduct.

The COURT.—Very well. The jury has nothing to do with this.

Mr. GREEN.—I except to that remark also, your Honor. I think it is a question for the jury. [112]

The COURT.—You can take your exception.

Mr. GREEN.—Q. How do you tell how far the North Farallones are off by looking at them?

A. I don't know.

(Testimony of C. F. Howell.)

Q. Aren't they dimmer or clearer, as the case may be, or larger or smaller, as the case may be, more of them showing or less of them showing, as the case may be? Isn't that the way you tell the distance they are from you?

A. I think a sea-going man usually tells distance because he is trained to do it. There is no particular way of describing how he does it. You cannot see the Farallones at their maximum and at the same time see them at their reduced area. There is not any comparison. It is just a thing you learn by doing it. That is the only way I can describe it.

Q. From this photograph, Captain, you would not say you were within a mile of them? That would be out of the question, wouldn't it?

A. I would not say anything relative to that photograph.

Q. You would not say you were 20 miles away from them, would you, from this photograph?

A. I would not hazard any opinion as to the distance of those islands, based on that photograph.

Cross-examination by Mr. CROWLEY.

On the occasion I refer to I took the "Quadra" and the "C–55" into custody, and Pensotti and McKenzie came aboard the "Shawnee."

Q. That is, after taking custody of these two vessels they came aboard your vessel?

A. No, I took them when I found the "C–55" had contraband cargo and then I took the "Quadra."

(Rep. Tr., p. 104.)

(Testimony of C. F. Howell.)

It was after these men came aboard that I took custody of the "Quadra." I had this conversation with Pensotti and McKenzie at about the time we were taking charge of the "Quadra" or just a minute or two before, or perhaps a minute or two after. [113]

Cross-examination by Mr. O'CONNOR.

On the day of the seizure of the "Quadra" I did not, that I know of, have aboard the "Shawnee" a picture of the "Quadra."

On the day of the seizure of the "Quadra" I did not have a picture taken, or supposed to have been taken, of the "Quadra" when she was a lighthouse tender and was wrecked or sunk some place.

I think that on the day of the seizure of the "Quadra," some time after we were under tow and McKenzie and Pensotti aboard the "Shawnee," I went below or to my cabin and there secured a picture of the "Quadra" as a lighthouse tender showing it wrecked or sunk, and showed that picture to McKenzie and Pensotti. I think I did. I did not have the picture. I went to a man who had a picture of the "Quadra." I didn't know he had it. There was a picture of the "Quadra" aboard at that time. Ensign Morse had the picture. I did not at that time show to the defendants McKenzie and Pensotti a picture of some pet that was aboard the "Shawnee"—a picture of some mascot or pet. I think the only picture I showed to them was the picture

(Testimony of C. F. Howell.)

of the "Quadra." I did not have any conversation with regard to it. I undoubtedly called their attention to the picture when I was showing it to them. I do not recollect any conversation at that time. That was when they were on the forecastle of the "Shawnee." I do not know when that was. I do not know whether it was after we took the tow or not. It might have been before we took the tow. I do not knew when it was.

I do not recollect showing the defendants McKenzie and Pensotti a picture of any other boat and asking them if they knew the boat. I would say definitely that I did not.

I had a picture of the "Prince Albert." I do not recollect showing it to Pensotti and McKenzie. I will not say that I did not. I do not remember whether on the day that the "Quadra" was seized, and [114] while McKenzie and Pensotti were aboard and we were under tow, I displayed to them a picture of the "Prince Albert," or a boat claimed to be the "Prince Albert," and at that time ask them if they recognized or knew the boat. I will not say that I did not.

At this time I am unable to say at what point of time I displayed to McKenzie and Pensotti this picture of the "Quadra" that I secured from Ensign Morse.

Q. (By Mr. GREEN.) Will you tell me, Captain, what time it was you passed Noonday Rock buoy abeam on the tow in?

(Rep. Tr., p. 107.)

We passed Noonday Rock buoy abeam at 2:29.

(Testimony of C. F. Howell.)

We passed North Farallone Rock abeam at 3:30.

We were about a mile off from those objects when we passed them. We ascertained that by checking the distance first off Noonday Rock by eye, because we had not yet established our speed over the ground. Approaching the North Farallone, when you would come abeam it would establish the speed we were making. Taking bearings off North Farallone, when it bore four points off the bow and when it was abeam we would get the distance it was off when it was abeam. I did not attempt to judge that by eye, as I never attempt to judge anything by eye if I can find any other means of getting distance.

I have been in the coast guard service twenty-six years next August and have been court-martialled three times.

Mr. GILLIS.—Just a moment, may it please the Court. I don't know what the object of this is.

The COURT.—No. It is manifestly improper, Mr. Green.

Mr. GREEN.—Well, your Honor, the competency of the officer—and of the witness—is certainly in issue.

The COURT.—Not at all. The statute provides the one question you can ask along that line.

Mr. GILLIS.—Mr. Green knew that before he ever asked the question. [115]

Mr. GREEN.—The witness has said—

The COURT.—I don't want any discussion on it, Mr. Green; the objection is sustained.

(Testimony of C. F. Howell.)

Mr. GREEN.—I except to the Court's ruling.

Q. Do you remember, on the 14th of May, at about 7:30 o'clock P. M. ramming into the Red Stack tug "Sea Lion" and "Sea Fox"—

Mr. GILLIS.—Just a moment. To which I object as not proper cross-examination, and Mr. Green knows it is not proper cross-examination.

Mr. GREEN.—No, I don't.

The COURT.—Objection sustained.

Mr. GREEN.—Exception.

The COURT.—Don't ask any more questions like that, Mr. Green.

(Rep. Tr., pp. 107, 108.)

I have part of the record I made several different times regarding what happened on the 12th of October last year. I have a record of the point that I considered of the greatest importance. That record is in the bridge-book.

Redirect Examination By Mr. GILLIS.

When I stated that the "Quadra" was 5.7 miles from the North Farallone I meant nautical miles. The reason no patent log was taken after we had the "Quadra" in tow was: The patent log is designed to be accurate within fairly circumscribed limits. Ours in the "Shawnee" is accurate, most accurate, when we are making approximately ten miles—ten knots. Knowing that we were going to make considerably less than that, I knew that the patent log would not register correctly; and, further, I did not want it over the stern when I was towing because there is a long scope of line

(Testimony of C. F. Howell.)

made fast to it, and it would have to be gotten out of the way if I wanted to back the engine. In my judgment at that time the reading of the [116] patent log would have been of no value when I had the "Quadra" in tow. We put a six-inch hawser aboard the "Quadra" for a tow-line. That is the smallest tow-line we had. My object in putting a small tow-line on her was because it was damaged forward and her chocks were obviously very light and I wanted to be sure and not damage her, and so I ran the line that I considered small enough so that the line would carry away before it would wreck the "Quadra." Putting that line aboard the "Quadra" had an effect upon our method of operating from the time we first bore the line taut. It had an effect upon the speed at which we started and moved in. We would start very slowly and caution the men on the throttle-watch to increase the speed on signal very slowly and carefully.

Recross-examination by Mr. GREEN.

In addition to the reasons given Mr. Gillis for putting the light line aboard, I figured the "QUADRA" was an easy tow. I have towed larger vessels. I have not towed them as fast as ten knots an hour. I do not recall a tow of a three masted schooner not long ago at ten knots. From my experience it is not a fact that you can tow with the "Shawnee" practically at the speed of the "Shawnee" if you want to. I considered the "Quadra" to be an easy tow.

(Rep. Tr., pp. 40–110.)

TESTIMONY OF WELLINGTON S. MORSE, FOR THE UNITED STATES.

Testimony of WELLINGTON S. MORSE, called for the United States, sworn.

Direct Examination by Mr. GILLIS.

I am a member of the coast guard and have been since last August. My rank is that of ensign. I was with Captain Howell on board the "Shawnee" on October 12, 1924. I remember the occasion of the seizure of the "Quadra" on that day. When we approached the "Quadra," say within five or six miles, I was on the bridge on duty. [117]

Q. And as you approached the "Quadra" was any signal given to the "Quadra" by the "Shawnee"?

Mr. FAULKNER.—I object to that as immaterial, irrelevant and incompetent, and not binding upon any defendants, officers and the members of the crew of the "Quadra," and another attempt to prove an overt act prior to the establishment of the conspiracy.

The COURT.—Overruled.

Mr. FAULKNER.—Hearsay, and the proper foundation has not been laid.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

Mr. GILLIS.—Answer the question.

A. At that time a signal was given to the "Quadra" to hove to, when we were within, say, about a mile of her.

Q. What was that signal?

(Testimony of Wellington S. Morse.)

A. Four blasts of the whistle.

Q. What did the "Shawnee" then continue to do?

Mr. FAULKNER.—The same objection.

The COURT.—The same ruling.

Mr. FAULKNER.—Exception. It is understood, if your Honor please, that this objection is on behalf of all of the defendants.

The COURT.—Yes.

A. The "Shawnee" continued to proceed in the direction of the "Quadra."

Mr. GILLIS.—Q. You approached the "Quadra" from what side of the "Quadra"?

A. Upon the "Quadra's" starboard side.

Q. Did the "Shawnee" come up to the "Quadra"?

A. We went around under her counter and came up on her port quarter.

Q. Did the "Shawnee" stop then?

A. We stopped.

Q. Did you take any bearings after the "Shawnee" had stopped on the port side of the "Quadra"?

Mr. FAULKNER.—The same objection. [118]

The COURT.—The same ruling.

Mr. FAULKNER.—Exception.

A. As we neared the "Quadra," I was officer of the deck, and it was my duty to establish our own position, of course, and that of the "Quadra"; as we rounded under her stern, I was on the flying bridge, up on top of the wheel-house, taking a bearing of Point Reyes and the North Farallones. I

(Testimony of Wellington S. Morse.)

took those bearings with the pelorus in conjunction with the stearing compass.

(Rep. Tr., pp. 111, 112.)

Before we had got that close to the "Quadra," I should say when we were about five miles of her, she turned around and headed offshore. She had previously been headed in toward the beach. At that time I went on the flying bridge to set both of these peloruses to zero. My idea in that was to get a bearing of the "Quadra" with reference to the "Shawnee" and the Farallones, in order to establish an angle inside of which was the "Quadra"; the captain wanted to know about what her distance would from the North Farallones, and I set those peloruses and established her distance as about six miles. That is the greatest distance that she could have been at that time from the North Farallones. She was inside of a triangle whose greatest base was six miles. That is the greatest distance she would have been from the Farallones. At that time the "Shawnee" was approximately five miles north of the "Quadra." As we rounded the port side of the "Quadra" and came under her counter I got a bearing at that instant of Point Reyes, and as we swung by on her port quarter I noted the bearing of the North Farallones; and just at about the instant that we stopped to hove to I reported that position to the captain. I plotted that position on the chart. I drew the line of bearing of Point Reyes and put my parallel rulers down and got the line marking the North Farallones, and took my dividers

(Testimony of Wellington S. Morse.)

and marked off the distance and reported that distance to the captain. [119]

Q. Do you remember what that distance was?

Mr. FAULKNER.—The same objection, and the further objection on behalf of the officers and the crew of the "Quadra" that they are all acts occurring beyond the territorial jurisdiction of the United States.

The COURT.—The objection is overruled.

Mr. FAULKNER.—Exception.

A. It was 5.7 miles.

Mr. GILLIS.—Q. From what?

A. From the northernmost Farallones.

Q. Will you just step down and examine the chart here, Government's Exhibit 1; calling your attention to the circle with the line drawn out to the word "position," what does that point represent inside of that circle?

Mr. FAULKNER.—The same objection.

The COURT.—The same ruling.

Mr. FAULKNER.—Exception.

A. That point, right there, represents the exact position at which the "Quadra" was located at the time we seized her, according to the cross bearings that were taken at that time.

Mr. GILLIS.—Q. Now, did you see a sounding taken from the "Shawnee" at or near that time?

Mr. FAULKNER.—The same objection, and, further, not binding on any of the defendants in this case.

The COURT.—The same ruling.

(Testimony of Wellington S. Morse.)

Mr. FAULKNER.—Exception.

A. I took that sounding myself.

(Rep. Tr., pp. 113, 114.)

When the lead hit bottom I was at the sounding machine. I was taking the sounding; that is, I had a finger on the wire and was waiting for the lead to hit bottom. There is never any mistake [120] about that, especially with a ship stopped. I saw the sounding tube brought to the surface of the water and on to the ship. I had it brought to myself. When I got it I looked at it and saw the reading and gave it to the quartermaster to bring to the captain for his inspection. It was in the scale when it was brought to me to read the sounding, to read the depth. I saw the man put it in the scale and took it in my own hands and verified it myself.

I have seen Government's Exhibit No. 2 and know it to be the tube and the scale used at that time.

Q. When you read the sounding from this scale, what did it read?

Mr. FAULKNER.—The same objection.

The COURT.—The same ruling.

Mr. FAULKNER.—Exception.

A. It read 44 fathoms.

Mr. GILLIS.—Q. Did you examine the dial on the side of the sounding machine? A. I did.

Q. And what did the dial read?

Mr. FAULKNER.—The same objection.

The COURT.—The same ruling.

Mr. FAULKNER.—Exception.

(Testimony of Wellington S. Morse.)

A. The dial read 44 fathoms.

Mr. GILLIS.—Now, after the sounding had been taken, did you at any time recheck your bearings?

A. Almost immediately afterward, when the "C–55" came alongside—while we were taking this sounding the "C–55" had been brought to, and was coming alongside of the "Shawnee," and as soon as she was made fast I again went on the flying bridge and verified those bearings at the captain's orders.

Q. By what means did you verify them?

Mr. FAULKNER.—The same objection.

The COURT.—The same ruling. [121]

Mr. FAULKNER.—Exception.

A. By the peloruses.

Mr. GILLIS.—Q. In the same manner that you had taken them previously?

A. The same manner.

Q. What was the result of your retaking of the bearings?

Mr. FAULKNER.—The same objection.

The COURT.—The same ruling.

Mr. FAULKNER.—Exception.

A. The position was exactly the same as given previously, 5.7 miles from the Farallones.

Q. Do you remember how Point Reyes bore from the "Shawnee'?

A. It bore 40 degrees true.

Q. Do you remember how the North Farallones bore from the "Shawnee"?

A. It was 114, I believe, true.

(Testimony of Wellington S. Morse.)

Cross-examination by Mr. GREEN.

When we were five miles north of the "Quadra" we were on a course, as I remember it, 125 per steering compass, which is about 143 or 144 true. For the enlightenment of the jury, that means that it is on a general southeasterly course. We were heading for the southern end of Cordell Banks to the vicinity of the North Farallones. The "Quadra" at that time was not very far to the westward of the North Farallones; she was a little north and west. As to remembering the exact course we were steering from the Cordell Banks, I stated it was 125 per steering compass. We are not in the habit of remembering every course we steer in a day. When we rounded the stern and came up on the port side of the "Quadra" she was farther away, from the North Farallones than when we first sighted her. She had steamed out a distance farther from the Farallones when she was captured than when she was first sighted. My recollection as to her headway is it is my judgment, that is all I have to go by, of course I do not know [122] just what speed she was making, but I will say that she covered at least two miles from the time she turned around to the time we hove her to. At the time we hove her to she was a couple of miles or more, a little bit more—two miles maybe—from the whistling buoy on Noonday Rock. I could see the buoy. It was very close. I would not say that she was practically on top of Noonday Rock Buoy when I first saw her, because it was to the northward of

(Testimony of Wellington S. Morse.)

Noonday Rock Buoy. We established that, where she was, when we picked her up. I could not see Noonday Rock buoy when I first saw her turn around and head out; apparently she was making the best she could make; she was smoking up very strong, and it looked like her fires were cold. I did not go aboard the "Quadra," but I have seen vessels get under way in a hurry before, though, and it looked very much to me as though she got under way in a hurry; that is my candid and honest opinion. As to whether she got up full speed, I would say she was making the best she could right then, and I believe that was the opinion of most anybody else on deck. As to Captain Howell's testimony, I am giving you my honest opinion; his and mine may not agree in that particular. She was not making much, doing the best she could. I don't know if she can make much.

I took one sounding. That is the only one that was taken. I was on the bridge the rest of the day. I was the navigating officer of the "Shawnee."

(Questions by Mr. CROWLEY.)

We rounded the stern and took our vessel on the port side of the "Quadra"; when we virtually lost all headway; we were at a standstill, of course, on the quarter of the "Quadra"; we did not advance any farther than we did under her side. I took the soundings when we were standing still.

Q. Was it when you came to the port side and stood still there, [123] the port side of the "Quadra," that you took your soundings?

(Testimony of Wellington S. Morse.)

A. We took the soundings—the vessel, of course, was swinging.

Q. Please answer as briefly as you can.

A. Yes, when we were still; we did not get under way.

(Rep. Tr., pp. 118, 119.)

After taking the sounding I made a recheck of certain bearings that I had taken. The "C–55" had been alongside when I went up to make the recheck.

Q. I understood you to say on your direct examination that, in connection with your recheck that that was the time the "C–55" came alongside?

A. Yes, but the "C–55" was alongside when I went on the flying bridge and took the soundings, or took the second set of bearings.

Q. The "Quadra" was in the custody of the "Shawnee" at the time you were then on its port side, taking your soundings?

(Rep. Tr., p. 119.)

The "Quadra" was not seized until after the "C–55" came alongside. We had just hove the "Quadra" to and sent after the "C–55," and when the "C–55" was returned the captain was taking care of the procedure in seizing her. I was taking care of that part of it which related to establishing our position. When I was establishing our position on the port side of the "Quadra" the "Quadra" was hove to. We were about 150 or 200

(Testimony of Wellington S. Morse.)

feet from her. It was then the "C–55" came alongside.

(Questions by Mr. GREEN.)

I took the sounding at about 11:50 or 11:55, right after I had taken the bearings to establish the position,—immediately we hove to alongside of the "Quadra." Everybody could see me take the bearing on the flying bridge. I was in full view of everybody.

Q. Did you plot your position when you took these first bearings that you have testified to when you were about five miles north of [124] the "Quadra"? A. You mean plot it on the chart?

A. Yes.

A. No, I did not. I did not think then that it was necessary, it was just an approximation to find out just—the idea was that when we start in hot pursuit of a vessel, we can travel after her and get her, and we have to establish some kind of a position from which we start this hot pursuit from; that is what the captain wanted that approximate position for. I could not see her position between the Farallones and myself, that is, in a vertical line, but I could see her water line, and I could not see that on the Farallones, so I knew that she was between the Farallones and me; I knew she was not any more than six miles away from the Farallones, because this triangle which I had there of these bearings brought her inside of that, and I told the captain that she was 5½ miles west northwest of

(Testimony of Wellington S. Morse.)

the Farallones, of the North Farallones. That was my best approximation.

(Rep. Tr., 121.)

I was then five miles away northerly, possibly a little bit to the westward; I should say maybe about north by west or north northwest. I was probably about five or six miles from the Cordell Banks at that time. They lie at that time a little west of north—about north northwest. I did not take that bearing when we were rounding under the counter of the "Quadra." I did take a bearing while the "Shawnee" was rounding under the counter of the "Quadra." Those on the "Quadra" may have seen me take the sounding. The ship was swinging to the right all the time. When we had stopped she was just laying there in the swell, and she was kind of working toward the "Quadra," her bow was heading toward the "Quadra," and if they were observing at all they may have seen it in certain parts of the "Quadra." But those who were right in line with our deck-houses, etc., on the "Quadra" could not have seen it, of course. The distance was not so great that they could not have seen it. You could have [125] thrown a potato from one to the other. At the time we were taking the sounding the "C–55" was coming alongside. She had been hove to and was returning to the vessel, returning to the "Shawnee"; apparently she was turned about and was coming toward the "Shawnee."

The sounding machine is located on the port side

(Testimony of Wellington S. Morse.)

of the "Shawnee," and the "C–55" came alongside of the port side.

At the time we took the first bearings our ship was on her course.

Mr. GREEN.—Q. Rounding to is not being on a steady course, is it?

A. She was coming under her stern when I took the first bearing. I took that as we were just passing her stern, that was taken off Point Reyes; the first bearing was taken at Point Reyes; and when she came around possibly about 20 degrees more I took a bearing of the Farallones; she was not swinging fast; in fact, when the first bearing was taken she was not swinging at all; she was headed on a course straight down past the stern of the "Quadra."

Q. I wish you would tell me how you arrived at this triangle that you are talking about when you took the observation to find out approximately how far the "Quadra" was off the North Farallones when you did not plot it on the chart?

A. I used a course line, the course we were on, as one line, and that left the Farallones on the port hand; I took a bearing of the Farallones and brought her up to that line; I also took a bearing of the "Quadra" and saw the angle that she made with our course line and the base, of course—I just drew a line at 90 degrees from the Farallones to the line of our course.

Mr. GREEN.—Q. Where did you draw those lines?

(Testimony of Wellington S. Morse.)

A. Well, you do not have to draw that line; that is apparent.

Q. What were you working on when you did this?

A. Parallel rulers, on that chart there.

Q. On that chart? A. On this chart, yes. [126]

Q. You made no lines at all with a pencil?

A. We make as few lines as possible on charts; we have to use them over and over again.

(Rep. Tr., pp. 123, 124.)

I do not recall making a mark with a pencil of this line. The captain wanted an approximation of her distance from the Farallones—at best it was only an approximation. That was all there was to it at that time. I have forgotten now what the bearing off the Farallones was at that time. I probably could not tell you in degrees. With relation to the ship's keel it was just a few degrees on the port bow, I should say about two points, about twenty-five degrees, twenty-two or twenty-five degrees. We had the Farallones on the port hand about two points. The "Quadra" was maybe a point on the port bow. We were intercepting her; we were heading her off. She was not making knots, as you might term it, but from the smoke that was coming out of her stack it looked like she was firing up pretty strong. As to her speed, I do not suppose she was making more than about four at that time, if she was making that, four knots an hour. It is not a fact that she was not making headway, because we changed course several times

(Testimony of Wellington S. Morse.)

to intercept her. We were about five miles away from her when she changed her course from inshore to offshore.

We passed the "Principio" upon the Bank right under her counter once that morning; I should say at that time we were maybe one hundred and fifty feet from her. When we left her I imagine we were around that distance from her. We drifted around there a while; I imagine we were probably a mile south of her. I do not know her position exactly. It was on the south end of the Cordell Bank. It was not necessary to take any sounding there to find out whether or not you were on the Bank. I know that because vessels don't anchor in more than one hundred fathoms of water with anchor cables out; she had anchor chains out. I knew she was anchored from that fact, because we could [127] see the tend of her cable. From that I knew she was anchored on the Cordell Bank. She had her anchor out there, hanging up and down. We left there about 10:30, or some matter of that sort; that, of course, is a matter of record. I think it was 10:54, if I remember correctly. It is a matter of record in the logs, the ship's logs. The engine-room logs will show when we were under way. On the trip of the "Shawnee" down from Cordell Banks we were making full speed, I should say about 120 revolutions, which would be twelve knots. It is not available to run the "Shawnee" any faster than that. I guess you could if you wanted to shake her to pieces. Twelve is the most we ever

(Testimony of Wellington S. Morse.)

tried to make with her. The "Principio" was lying, as I remember, just about south of the center of the Cordell Banks. It took about an hour from the Cordell Banks to where the "Quadra" was. We were under full speed all the way. Well, we ran at standard full speed at first until we saw this vessel change its course. It apparently was a vessel headed for San Francisco when we first saw it that morning. We did not get down to full speed until it apparently looked like what we term out there a "rum runner." We first saw the "Quadra" early that morning, about eight o'clock. We were then in the vicinity of Cordell Banks. We just noticed a ship to the southward, headed in, with the trisail set. She was in the same position when we started for her several hours later.

The COURT.—Let me get at that just a moment.

Q. You saw her at eight o'clock in the morning?

A. Yes, sir.

Q. Within six miles of the Farallones?

A. She was just in the same relative position. We saw her that morning when we were hovering in the vicinity of the "Principio." Then there was a small boat, the "C-731," I believe, that had come away from the side of the "Principio" and we chased her out to sea four or five miles and intercepted her and searched her and then we went back and lay under the stern of the "Principio" just to put her business on the blink for [128] the day—that was all—and happened to notice this vessel down to the southward again, in the same

(Testimony of Wellington S. Morse.)

place exactly, stationary, and we came to the conclusion that she was anchored on Fanny Shoal. The captain said, "Well, we have nothing to do but just hang around the 'Principio,' let us go down and look that fellow over, we can see the 'Principio' from that position just as we can see him from our position."

Q. Then the "Quadra" had been in that same relative position, as I understand it, for several hours?

A. Yes, it had not moved, apparently.

(Questions by Mr. GREEN.)

I remember being in company with a whaler some time that morning early, about 7 or 7:30, or some such matter. We were possibly six or seven or eight miles east of Cordell Bank at that time. We were between Point Reyes and Cordell Bank, a little to the southward. I don't just remember whether we stayed with the whaler any longer than 7:30. I was not on watch until eight o'clock. I was around there, maybe I was shaving, and perhaps looking out of the port. We were trying to keep clear of the whaler; she was chasing a whale or two at that time, and we were keeping out of their way. If the whale would cut across our bow, we would stop and let the whaler go ahead, we were not going to interfere with him. They did not shoot any whales out there at that time, but there was a whale on the bow and we could not understand why he didn't let go; she was very close to us.

At eight o'clock we were in the vicinity of the

(Testimony of Wellington S. Morse.)

Cordell Banks and the "Principio." I had not noticed the "Quadra" up to that time. I was not on watch. I probably had just gotten up a little while before. The "Quadra" made a larger angle with us at that time. We were probably a little further away at that time. [129] If we were westward of the Cordell Banks we would be closer, that is what I say, that at that time she was probably a little further away from us than she was when we got up on the Cordell Bank. I figure that out because where we were on the Cordell Bank she was almost directly south of us, whereas, in the position of the whaler, she was at an angle of about 45 degrees. When we were on the Cordell Bank she was a little south and to the eastward, nearer south than east. I do not know how much further away she was when we were with the whaler than when we were on the Cordell Bank; I did not measure; I did not see her; I would not hazard a guess; I would not say. I cannot picture those angles in my head and measure out the hopothenuse there, because it would be a very wild guess at the best, but the chart is right here. We sighted the "Quadra" when we were on the Cordell Banks; we just noticed her; she looked like a ship headed in. We could see her masts and her stack. We saw the sails set. That is what attracted our attention to her. If she didn't have her sails set, maybe we couldn't have seen her. We could not see her hull; her hull was down.

(Testimony of Wellington S. Morse.)

Redirect Examination by Mr. GILLIS.

The sounding line on the "Shawnee" is dropped astern. We have an outrigger there to keep it clear of the stern and it drops from the stern.

TESTIMONY OF H. ROTHE, FOR THE UNITED STATES.

Testimony of H. ROTHE, called for the United States, sworn.

I am a member to the coast guard and was on the "Shawnee" on October 12, 1924, the day the "Quadra" was seized. I recognize Government's Exhibit 2. That is the Tanner-Blish sounding tube and the scale used when a sounding was taken on that day when we were near the side of the "Quadra." I was on the bridge at the time the sounding was taken. It was brought up and shown to Captain Howell. [130] I was directed to take where the reading came, because when these tubes dry out there is no way of telling where the reading is, and I was to take this tube in the scale to mark the reading.

Q. What did it read at that time?

A. 44 fathoms.

Mr. FAULKNER.—Just a moment. I ask that the answer be stricken out in order that the defendants may object to that as immaterial, irrelevant and incompetent, and the proper foundation is not laid, and not binding upon any of the defendants in this case, and an act occurring beyond the territorial jurisdiction of the United States.

(Testimony of H. Rothe.)

The COURT.—Let the record show that the objection was made before the answer, and the objection is overruled.

Mr. FAULKNER.—Exception.

(Rep. Tr., 131.)

I was not astern of the "Shawnee" when the sounding tube was brought up. I did not hand the tube to the captain at the time it was brought to the bridge. At that time I was standing by the captain. Another quartermaster brought it up from the stern, and the captain directed me to take it after he read it. I read it.

Q. What did it read?

Mr. FAULKNER.—The same objection.

The COURT.—The same ruling.

Mr. FAULKNER.—Exception.

A. 44 fathoms.

(Rep. Tr., p. 132.) [131]

TESTIMONY OF AUGUST ANDERSON, FOR THE UNITED STATES.

AUGUST ANDERSON, called for the United States and sworn.

(Questions by Mr. GILLIS.)

I am a member of the coast guard, of the rank of chief boatswain, and have been a member for a little over 32 years. I made a test of the speed of the "C–55."

Q. What was her average speed?

A. 6.6 knots per hour.

(Testimony of August Anderson.)

Mr. FAULKNER.—We ask that that go out for the purpose of objection.

The COURT.—Let it go out.

Mr. FAULKNER.—We object to that as immaterial, irrelevant and incompetent, not within the issues of the case, too remote, too general, the speed of the "C-55" to-day is not necessarily the speed of the "C-55" as of October 12, or any other time, not binding upon any of the defendants, individually or collectively.

The COURT.—I suppose the question, Mr. Gillis, is directed to the provisions of the treaty between the United States and Great Britain?

Mr. GILLIS.—Yes, your Honor; I am simply covering all points. Personally, I take the view it is not necessary to do it, but I appreciate the fact that there may be a record go on appeal, and I simply wish to put in all of the evidence that is necessary to cover all points.

The COURT.—Any other objection?

Mr. CROWLEY.—Yes, may we have an objection to this testimony, the same objection as we made when Captain Howell was on the stand, and made at length?

The COURT.—Yes. [132]

Mr. CROWLEY.—And exception.

Mr. FAULKNER.—May I indicate this to your Honor in connection with the reason that prompts the offer of this evidence, it is incumbent upon the proper foundation being laid to show that this speed is the speed at the time the ship was alongside of the

(Testimony of August Anderson.)

"Quadra"; no other speed is controlling upon the Court, or gives them jurisdiction under the treaty for the seizure of either the "C–55" or the "Quadra." Now, Mr. Gillis has announced his purpose, and, therefore, if he sticks to the purpose for which he offers the evidence, he must confine himself to legal evidence under that treaty.

The COURT.—Of course, you are familiar with the provision of the statute with regard to presumption, and one of them is the condition that exists is presumed to have always existed; if there was any change in the speed of the boat from the 12th of October to the time the test was made, of course it would be a proper matter to be shown.

Mr. FAULKNER.—This question has been passed upon in a similar case to this, in which the District Court of Connecticut held that the speed of a revenue cutter loaded and empty is not controlling upon the speed of a revenue cutter laden with liquor.

The COURT.—What does the treaty between the United States and Great Britain say?

Mr. FAULKNER.—The treaty between the United States and Great Britain is in this language: I will read the article under which, of necessity, Mr. Gillis' evidence must come in: "The rights conferred by this article shall not be exercised at a greater distance from the Coast of the United States, its territories or possessions, than can be traversed in one hour by the vessel suspected of endeavoring to commit the offense. [133] In

(Testimony of August Anderson.)

cases, however, in which the liquor is intended to be conveyed to the United States, its territories or possessions, by a vessel other than the one boarded and searched, it shall be the speed of such other vessel, and not the speed of the vessel boarded, which shall determine the distance from the coast at which the right under this article can be exercised." Now, in passing upon the speed of a vessel other than the vessel which was seized, the District Court of Connecticut has determined that the speed, under the circumstances, in regard to sea, wind and tide, the speed under the circumstances under which the vessel is laden, is the only speed to determine the right of the seizure of the other vessel.

The COURT.—At the very time of the seizure?

Mr. FAULKNER.—At the very time of the seizure.

The COURT.—I do not agree with that, at all. The objection is overruled.

Mr. FAULKNER.—Exception.

Mr. GREEN.—I would like to make the further objection that no proper foundation has been laid in this, in that it has not been shown that any liquor was intended to be conveyed to the United States by the "C-55."

The COURT.—Of course, Mr. Green, that is, again, a question of the order of proof, and, of course, if it be not shown that the vessel was engaged in the business of conveying liquor, there may be something to that. You can renew that

(Testimony of August Anderson.)

objection at the proper time. For the present it is overruled.

Mr. GREEN.—Exception.

Mr. O'CONNOR.—That objection, if your Honor please, applies to all the defendants?

The COURT.—Yes. [134]

Mr. O'CONNOR.—And exception.

Mr. GILLIS.—Q. Now, you may answer the question, Mr. Anderson, the average speed of the "C-55." A. 6.6 knots per hour.

Mr. GILLIS.—That is all. You may cross-examine.

(Tr., 133–136.)

Cross-examination.

(Questions by Mr. GREEN.)

I made this test on February 17, 1925, by running over a course between the buoy on Alcatraz Island and the buoy on the west end of Angel Island. I know the distance between these buoys. It is fixed on the chart. The charts of the Bay of San Francisco—the charts of the San Francisco Bay issued by the Coast and Geodetic Survey. No preparations were made except boiling the engine, that is all, and taking the water out of the bilges of the vessel. It was not laden at the time of the trial. There was no cargo on board of any kind. There were three people on board. It was made in the afternoon. I ran over the course between the buoy on Alcatraz Island and Angel Island several times. The tide on that day was just about slack water, just on the turn of the tide. I never ran her out

(Testimony of August Anderson.)

west of the Farallones. The condition of the weather was nice, it was a sort of westerly breeze, a little choppy, but not very much. I had the breeze on the beam. It was done some time in the afternoon. It covered quite a little time; I do not exactly remember the exact hour, but it was in the afternoon; I think we started out somewhere around after one o'clock or something like that, if I remember right. The distance on the chart that I refer to is nautical miles. The fuel was on board the vessel. I didn't add anything to it. I didn't put any preparation [135] into the gasoline. The distance we traveled was between the two buoys, which was 5,400 yards. I fixed that distance by measuring off the distance on the chart by the scale of the chart with dividers and no other way. I did not run her over any other course. I just ran her several times over this same course, and those are all of the facts upon which I base my opinion as to her speed.

(Rep. Tr., pp. 133–136.)

TESTIMONY OF H. S. CREIGHTON, FOR THE UNITED STATES.

H. S. CREIGHTON, called for the United States and sworn.

(Questions by Mr. GILLIS.)

My position with the Government is that of customs agent, and have been one about sixteen years. On October 15, 1924, I had occasion to visit the "Quadra" in San Francisco Bay. I was on it on

(Testimony of H. S. Creighton.)

that day. I recognize the book you show me. I found it on the shelf in the supercargo's cabinet of the "Quadra" on October 15th.

Mr. GILLIS.—I ask that the book be introduced in evidence and marked "U. S. Exhibit" next in order.

Mr. FAULKNER.—If the Court please, we object to that on the ground that the book is immaterial, irrelevant and incompetent, hearsay, no proper foundation laid, not within the issues of the case, and another attempt to prove an overt act before the establishment of a conspiracy, not binding on the defendants jointly or severally; and upon the further ground, if the Court please, that the offer of this book in evidence is in violation of the rights of the defendants, each of them, jointly and severally, under the Fourth and Fifth Amendments to the Constitution; and particularly on all the grounds urged at the time of the urging of the motion [136] to suppress and exclude evidence. And as to all of the defendants other than the officers and members of the crew, we particularly urge the point that no proper foundation has been laid as to them and it is not binding as to them. As to the officers and members of the crew, we urge all of the points urged in the motion to exclude evidence, and particularly that it is in violation of their rights under the Fourth and Fifth Amendments to the Constitution of the United States. Your Honor will have in mind that if that is a book in the handwriting of any person not a defendant in

this case it cannot under any theory of the case be admissible in evidence.

The COURT.—It seems to be a partial log of the "Quadra" running from September 10 to October 7. Objection overruled.

Mr. CROWLEY.—May I enter the objection, if your Honor please, that it is self-serving; that there was and is no evidence showing or tending to show *prima facie* or at all, the existence of a conspiracy alleged, or of any conspiracy. And there is no evidence at all showing or tending to show that the or any of the defendants was or is connected therewith. There is no evidence furthermore, your Honor, showing any personal responsibility or familiarity of any of the defendants with the book now proposed to be offered in evidence.

Mr. FAULKNER.—And I may add to that, the Court indicating before passing on the motion that it purported to be a log, the record in the handwriting of the persons who identified the book shows that it was hidden away on a shelf on the "Quadra" and undoubtedly could not have served the purpose of a log on the "Quadra" or an official instrument of any sort.

The COURT.—It is not a regular log. It is admissible. Objection overruled.

Mr. FAULKNER.—Exception. [137]

Mr. CROWLEY.—We note an exception, your Honor.

(Rep. Tr., pp. 139, 140.)

The book was here marked U. S. Exhibit 6.

(Testimony of H. S. Creighton.)

Mr. GILLIS.—The card that is attached to Government's Exhibit No. 6, where did you find that, Mr. Creighton? A. In the same room.

Q. In the same room?

A. In the same cabinet.

(The card was then detached from the book and marked U. S. Exhibit 7 for Identification.)

Mr. GILLIS.—I desire at this time to read from this exhibit that has been offered in evidence.

Mr. FAULKNER.—The same objection to its being presented to the jury.

The COURT.—The same ruling.

Mr. FAULKNER.—Exception.

Mr. GILLIS.—(Reading.)

"S. S. Quarda

Sailed from Vancouver Wednesday, Sept. 10, 1924, 10:30 A. M. Kiltursh alongside. Straits Juan De Fuca 10:30 P. M.

Sch. Odenn alongside 11 P. M., transferred 500 Chinese W. C."

(The following appears in the margin):

"Sacking daily on all spare time from 6 A. M. until 5 P. M."

"Sept. 11th.

Anchored 1:40 A. M.

Hove away 6 A. M. and steamed out. Picked up Kiltursh and took on board 204 sacks R Beer and 380 boxes. Discharged aboard Kiltursh 2374 cases. Anchored 9 A. M.

"Sept. 12th.

Hove away 6 A. M. Picked up Kiltursh and Discharged 100 cases.

(Testimony of H. S. Creighton.)

Proceed to sea looking for"—and here is a word I cannot make out, and after it is the word "Swiftsure. Light ship 4:30 P. M."

The WITNESS.—May I suggest that it is "Comet."

Mr. GILLIS.—I don't know.

"Took departure bearing and proceeded southward.

"Sept. 16th, Tuesday. [138]

"Picked up Malahat 7:30 A. M. off P. Reyes."

On the margin of the next page: "Sacking and trimming ship continued daily from 6 A. M. until 5 P. M. No rest for a booze runner."

The COURT.—Is that a part of the log or a mere philosophical observation?

Mr. GILLIS.—I presume it was a man's feelings at that particular time, expressed in words.

"Sept. 17–18–19.

Fresh northerly winds and heavy swell. Sacking cargo. Shipping water and decks and bowspit leaking badly. Forecastle flooded.

"Sept. 20, Saturday.

C–731 alongside 2 P. M.

Completed Order 110.7. Light N. W. Wind and easy swell.

"Sept. 21.

Vis 4 Alongside. 7 A. M. Easy swell. Light N. W. breeze. Completed orders 2–3–8 3 P. M. Moored alongside Malahat 4:15 P. M. and discharged empty fuel drums. Completed 6:30 P. M. Cast off and hove to for the night.

"Sept. 22nd.

Marconi alongside A. M. with 40 barrels Bourbon from Malahut. P. M., Marconi alongside with 35 barrels bourbon. Light breeze, easy swell. Marconi Completed orders 110 12 for shore 4 o'c P. M. Steamed 4 miles to sea and Hove too for the night.

"Sept. 23.

Named alongside Malahat 8:15 A. M. Thick fog, light swell. Transferred from Malahat to Quadra 60 barrels bourbon. Cast off and hove too. Completed Orders 4–6 4 P. M. Marconi alongside and loaded 23 empty fuel barrels for Malahat. Hove too for the night. [139]

"Sept. 24.

6 A. M. began taking cargo out of abaft No. 1 hatch and stowing in the Port wing between decks and in fore peaks of lower hold to make room for Chinese Wine to be transferred from Malahat when weather permits. Fresh N. W. wind blowing, and moderate sea. No boats to-day, but a damn hard days work for deck crew and supers.

"Sept. 25.

Strong northwester blowing and heavy seas running. Cleaned out fore hold for reception of Chinese Wine. Battened down hatches and re-stowed cargo that had shifted between decks abaft and cut down to cook stores. 6 P. M. wind and sea increasing. Vessel riding comfortable. Nothing in sight.

"Sept. 26.

Picked up Malahat 10:30. Motor Boat Cali-

fornia came close aboard with stores and 15000 sacks but refused to come alongside on account of our guard rail. Heavy swell running, consequently she discharged her cargo on Malahat.

"Sept. 26, Continued.

which was later transferred to us by M. B. Marconi. 4 P. M. Marconi again alongside with 200 cases Chinese Wine from Malahat. Also M. B. Pilgrim alongside and completed order No. 15. 6 P. M. Marconi alongside with another load of 200 cases Chinese Wine from Malahat. 7:30 P. M. Completed unloading Marconi a steamed to windward for the night. Light N. W. wind out. Swell running.

"Sept. 27.

6 A. M. Calm and clear. M. B. Charles Truelson alongside. Sacking cargo to complete orders No. 13–14. Marconi alongside with 200 cases Chinese Wine. Discharged her and loading orders 13–14. Marconi again alongside with 200 cases Chinese Wine. [140] "Discharged and completed Orders 13–14. Lunch Time.

1 P. M. M. B. 3682 alongside and completed order No. 11. Also order from Malahat No. 136 for 3 barrels Bourbon. No. 70–71–72. Marconi alongside with 200 Chinese Wine. And loaded 50 empty fuel barrels transferred to Malahat. Hoisting out fuel from fore tween decks for after tanks until 2 bells. Supper. Steamed to windward for the night. Clear and calm."

(On the margin appears the following):

"Space on ship and in holds nearly filled up."

"Sunday Sept. 28.

7:30 A. M. Fresh breeze N. W. moderate swell. Marconi alongside with 99 cartons of Chinese Wine. Alongside again 1:30 P. M. with 100 cases and 49 cartons. 4:30 P. M. alongside again with 160 cases. No boats from shore. Weather raw and cold. Marconi also took off empty fuel barrels to Malahat.

"Sept. 29.

8:30. Charles Truelson alongside and completed orders 18–19–20. Lunch? Sacking continued during P. M. until 3:30. M. B. 903–B alongside and completed order 17—bourbon barrel No. 73. 5:30 P. M. steaming to windward dead slow Farallone Rock plainly visible about 15 miles to eastward.

"Sept. 30.

Completed transferring cargo from Malahat at 7:30 P. M. Malahat sailed for home. N. Wester beginning. Supercargo Rondall aboard California let go and went in.

"Oct. 1.

Heavy N. W. wind and sea. Sacking cargo.

"Oct. 2.

Heavy N. W. Wind and sea. Decks leaking badly. Sacking cargo. [141]

"Oct. 3.

Still blowing hard steaming in to N. West, dead slow sacking cargo.

"Oct. 4.

Weather the same no change heavy sea. Sack-

ing cargo very uncomfortable. Water slopping around between decks.

"Sunday, Oct. 5.

Wind hauled to S. E. and blowing a gale and raining. Doing a little washing 4 P. M. Wind dropped to light breeze. Sky heavy and cloudy.

"Oct. 6th.

Strong easterly wind. Sch Coal Harbour in sight about 10 A. M. M. B. C731 alongside. Completed Order 32–34. California alongside and completed order 21. Supercargo Randall left for shore. Transferred 232 cases Gordon Gin in boats from Coal Harbour. 7 P. M. steamed to windward and hove too for the night light N. W. breeze.

"Oct. 7.

A. M. Kiltursh alongside and unloaded 100 bbls. fuel oil. Marconi alongside and completed orders 16–27. C 808 alongside and completed orders 28. Ocean Queen alongside and completed order Mal 43 with 300 Chinese wine and B. B. 82–83–84–85–86– Light N. W. wind. Coal Harbour sailed for home."

Mr. GREEN.—Might I ask if what Mr. Gillis read is all that is contained in the book?

Mr. GILLIS.—That is all that is contained in the book, Mr. Green, with the exception of some red ink writing on the cover, which was written there by Mr. Creighton at the time he got the book; and the numbers on the pages, which was also done by him. On page 2 of the book it says:

"Vancouver, B. C. Sept. 9, 1924. S. S. Quadra. Copy of cargo list." That is a list of the cargo, [142] as it says, "Copy of cargo list." The only thing is that cargo—unless it is desirable to read it all,—that I want to call attention to is one line, where it says, "Corby's Rye, 1000; Alcohol, 10 gal. Kegs, 400. Beer from Kiltursh, Sept. 11, 1924; Sacks Rainer Beer, 204. Cases Rainer Beer, 380." With that exception that is all I can see contained in the book.

Mr. FAULKNER.—We move that everything in the book read by Mr. Gillis be stricken out and the jury instructed to disregard it on all the ground stated and upon the further ground that the reading of the record shows that it is not an official log of the steamer "Quadra"; the last look shows that it is nothing more or less, giving it its best impression, than a copy of another instrument, and that other instrument would be the best evidence of that which is contained in this.

The COURT.—You mean so far as applies to the cargo? That would necessarily be a copy of the ship's manifest?

Mr. FAULKNER.—Yes, your Honor.

The COURT.—That may be true, but it was found in the room of one of the defendants here, the supercargo. The motion is denied.

Mr. FAULKNER.—As to the entire part, your Honor, or is it granted as to the copy of the list read?

The COURT.—Yes, I think I will grant it because the manifest would be the best evidence.

Mr. GILLIS.—Your Honor, would not that go to the weight of the evidence and the value of it rather than to what is contained here?

The COURT.—No, I think not. The copy of a ship's manifest made by a defendant who is not on trial it seems to me would not be admissible. A statement made by him in regard to what was done, if it was during the progress of the conspiracy, is, of course, [143] admissible against all. A mere copy of the document which showed the cargo of the ship would not be admissible. That part of it which purports to contain the cargo will be stricken out. As to the rest of it, the motion is denied.

Mr. FAULKNER.—Exception.

Mr. GREEN.—Your Honor, I would like to add a further ground to the motion to strike out this evidence. It is apparent from the reading of the book that everything that is set forth therein happened outside of the territorial waters of the United States.

The COURT.—You would not contend, would you, Mr. Green, that if a man were here properly charged with crime that a statement made by him in London would not be admissible against him?

Mr. GREEN.—Well, that is all right for what it is worth.

The COURT.—It is for the jury to tell what it is worth. Motion denied.

(Testimony of H. S. Creighton.)

Mr. GREEN.—I think, your Honor, that is a question of law.

The COURT.—I deny the motion.

Mr. GREEN.—Exception.

(Rep. Tr., pp. 141–147.)

WITNESS.—(Continuing.) I recognize the picture you ask me to examine. They were taken under my direction and supervision. They are photographs of the "Quadra" and different parts of the "Quadra" as they existed on the day the pictures were taken. These photographs correctly depict the ship and cargo as it was at that time. The cargo was in the same condition as it was when it was brought in by Captain Howell.

Mr. GILLIS.—I ask that these pictures be introduced in evidence and marked Government's exhibit next in order.

Mr. CROWLEY.—The same general objection that we have had running throughout the trial.

Mr. FAULKNER.—The same objection on behalf of all of the defendants, jointly and severally. [144]

Mr. GREEN.—Particularly the objection on behalf of the officers and the captain and the crew of the "Quadra" on all of the grounds stated in the motion to exclude evidence.

Mr. FAULKNER.—I might indicate further that the pictures taken show that they do not conform to the foundation laid by Mr. Creighton and do not represent the condition of the cargo at the time of seizure.

(Testimony of H. S. Creighton.)

The COURT.—They show what was in the boat. Overruled.

Mr. FAULKNER.—Exception.

Mr. CROWLEY.—Exception.

(Rep. Tr., pp. 148, 149.)

Whereupon the photographs were received in evidence and marked U. S. Exhibits 8 to 15 inclusive.

WITNESS.—(Continuing.) I have here some small slips of paper that were found in the captain's room on the "Quadra" on October 15, 19[illegible].

Mr. GILLIS.—I offer these six slips of paper in evidence, may it please the Court, and ask that it be marked Government's exhibit next in order.

Mr. CROWLEY.—The same objection.

Mr. FAULKNER.—The same objection on behalf of the defendants jointly and severally, and the further objection that the pictures were found three days postdating the seizure and the arrest of the defendants, and during a period of time on which the vessel was in the control of people other than the defendants; the proper foundation has not been laid.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

(Rep. Tr., p. 149.)

Whereupon said documents were received in evidence and marked U. S. Exhibits 16. [145]

Mr. Gillis read from Exhibit 16 as follows: "September 27, 1924, 3/200 2/200 1 boat 200 cases Chinese wine transferred from 'Malahat' to 'Quadra.' G. F.

400 cases Chinese wine transferred from 'Malahat' to 'Quadra.' September 26, 1924, G. F.
From 'Malahat' 40 barrels boat Bourbon transferred to 'Quadra' September 22, No. 168 to 207. G. Ford. September 23, 1924, 61 barrels bulk bourbon transferred to 'Quadra' from 'Malahat,' 132, 82, 78, 70, 39. George Ford.
35 barrels of bourbon transferred from 'Malahat' to 'Quadra' September 22, No. 133 to 167. George Ford.
Transferred from 'Malahat' September 28 1/100 cartons Chinese wines, 48 3/12 cartons Chinese wines, 2/100 cases Chinese wines, 3/160 cases Chinese wines." [146]

Mr. GREEN.—I move to strike out the exhibit just offered by the Government on all of the grounds urged in the motion to exclude evidence heretofore made, and on the further ground that it is apparent from the reading of this exhibit that they are not evidence of any violation of any law of the United States; a transfer of liquor on the high seas; and there is no showing to the contrary, from one foreign vessel to another vessel, it is certainly not a violation of any law of the United States.

The COURT.—No, not of itself, but I cannot anticipate what the evidence will be; of course, if there is no evidence here that this vessel was lying out there for the purpose of landing liquor on our shore, that would be true; but this is only one step of the evidence, and it may develop that there was some landing. I deny the motion.

Mr. GREEN.—Exception.

Mr. CROWLEY.—Exception.

(Rep. Tr., p. 150.)

(Rep. Tr., pp. 138–152, inclusive.)

TESTIMONY OF S. H. SACKETT, FOR THE UNITED STATES.

S. H. SACKETT, a witness called on behalf of the United States, being first duly sworn, testified as follows:

My name is S. H. Sackett, and I am an inspector of U. S. Customs, detailed as a lieutenant of inspectors at the port of San Francisco.

I recognize the book shown me and marked "Mate's Log-book." I got this book from the steamer "Quadra" on October 14, 1924, from the officers' quarters on board the "Quadra."

Mr. GILLIS.—I ask that it be introduced in evidence and [147] marked Government's exhibit next in order.

Mr. FAULKNER.—The same objection to it that was made to the introduction of similar exhibits taken from the "Quadra" and on the further ground that the instrument in question was illegally seized from the possession of the defendants, officers and members of the crew of the "Quadra" at a point beyond the territorial jurisdiction.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

(Rep. Tr., p. 153.)

(Testimony of S. H. Sackett.)

Whereupon said book was introduced in evidence and marked U. S. Exhibit No. 17.

WITNESS.—(Continuing.) I recognize the instrument marked "Certificate of British Registry" and received the same from the steamship "Quadra" on October 14, 1924, in the officers' quarters.

Whereupon the said document was received in evidence and marked U. S. Exhibit No. 18.

Mr. GILLIS.—In the exhibit that has been just introduced in evidence, No. 18, I desire to call attention of the Court and jury to the portion on the inside, the last notation made, "George Ford whose C. O. C. is No. 6923, is now master. A. E. Johansen, District Registrar."

On the other side, "I hereby certify that the Canadian Mexican Shipping Company Limited, of the City of Vancouver, British Columbia, is the sole registered owner of 64/64 shares in the within-described vessel. Custom House, Vancouver, B. C., 5th September, 1924. George A. Adams, For Registrar."

(Rep. Tr., p. 155.) [148]

WITNESS.—(Continuing.) I recognize the instrument marked "Agreement of Articles" and "Account of Crew." I first saw them in the hands of Captain Ford on the "Quadra" on October 13th. They were later delivered to us. I had a conversation with him with reference to them.

Mr. CROWLEY.—Just a moment, we object to that on all of the grounds heretofore stated in the

(Testimony of S. H. Sackett.)

general objection that we have running to all of this evidence.

The COURT.—Overruled.

Mr. CROWLEY.—Exception.

Mr. FAULKNER.—Exception.

(Rep. Tr., p. 157)

WITNESS.—(Continuing.) He told me that it was the official crew list of the ship and that he wanted to take it up to the British Consul here, so at that time I left it in his possession. It is the ship's copy of the shipping articles.

Mr. GILLIS.—I ask now that it be introduced in evidence and marked Government's exhibit next in order.

Mr. CROWLEY.—We object to it on the grounds heretofore stated.

Mr. GREEN.—I object to it on behalf of the captain and officers and crew of the "Quadra," particularly on all of the grounds stated heretofore in the motion to exclude evidence on file here.

The COURT.—It is a form of ship's articles prescribed by the statute of the Dominion. Overruled.

Mr. GREEN.—Exception.

(Rep. Tr., pp. 157, 158.)

(Rep. Tr., pp. 152–158, inclusive.) [149]

TESTIMONY OF JOHN TOLAND, FOR THE UNITED STATES.

JOHN TOLAND, a witness called on behalf of the United States, being first duly sworn, testified as follows:

My name is John Toland, and I am a clerk in

(Testimony of John Toland.)

the Customs service in charge of the Appraisers Stores and as such have charge of the cargo of the steamship "Quadra." I did not have charge of the unloading at the docks. The cargo was delivered to me at the Appraisers Stores and is now in the Appraisers Stores.

I also had and have charge of the cargo of the "C–55" and the same is now in my custody. I did not myself see any of the cargo taken off the "Quadra" or the "C–55" and do not know whether the liquor that I now have in my possession came from either of those vessels of my own knowledge except from the fact that the tickets that accompanied it say that it came from those vessels. It was unloaded by inspectors at the waterfront and hauled to the Appraisers Stores by the Overland Freight & Transfer Company. Each load was accompanied to the Appraisers Stores by a Customs officer and delivered to me.

Mr. GILLIS.—Q. I hand you now and ask you to examine the card marked "Seizure 27633" and ask you do you recognize that? A. Yes.

Q. What does the sack contain, if you know?

Mr. CROWLEY.—We object to it on all the grounds heretofore stated, and each and all of the grounds.

Mr. O'CONNOR.—It is objected to, may it please the Court, on behalf of the defendants McKenzie and Pensotti as immaterial, irrelevant and incompetent, and upon the further ground that no proper foundation has been laid.

(Testimony of John Toland.)

The COURT.—Objection overruled. [150]

Mr. O'CONNOR.—Exception.

Mr. FAULKNER.—And the objection on behalf of the remaining defendants is on the same ground and on the additional ground it calls for the opinion of the witness, and that the bag and contents are the best evidence of the fact.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

A. Corby's Whiskey.

Mr. GILLIS.—Q. Where was this sack taken from, that is, what boat did this sack come from?

Mr. FAULKNER.—We object to that on all the grounds heretofore stated, and particularly on behalf of the officers and members of the crew on the ground that it is in violation of their rights under the Fourth and Fifth Amendments to the Constitution, and that the seizure of the "Quadra" occurred beyond the territorial jurisdiction of the United States.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

(Rep. Tr., 160, 161.)

A. "C-55."

Whereupon said exhibit was marked U. S. Exhibit No. 20 for Identification.

Mr. GILLIS.—I ask that it be offered in evidence now.

Mr. FAULKNER.—We renew our objection on the ground that the proper foundation has not been

(Testimony of John Toland.)

laid; there is nothing in the record to show that this liquor was taken from the "Quadra."

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

(Rep. Tr., p. 162.)

Whereupon it was stipulated by and between counsel that Exhibit No. 2 for Identification contained alcohol in excess of one-half of one per cent by volume and that it was fit for beverage purposes. [151]

Thereupon said Exhibit 20 for Identification was admitted in evidence and numbered U. S. Exhibit No. 20.

WITNESS.—(Continuing.) Sack No. 27639 I recognize as the sack which with its contents came from the "Quadra". and contains Corby whiskey, which is a Canadian rye whiskey. I did not see this liquor taken from the "Quadra" and I am merely testifying that it was liquor delivered to me as coming from the "Quadra" and stored in the Government warehouse.

Whereupon, without waiving any of the objections heretofore urged on behalf of the defendants as to the admissibility of the exhibit in evidence, it was stipulated that said exhibit contained more than one-half of one per cent of alcohol by volume and was fit for beverage purposes.

Thereupon said exhibit was received in evidence and marked U. S. Exhibit No. 21.

Mr. GILLIS.—At this time I desire to call attention of the Court and Jury to the sack of Corby

(Testimony of John Toland.)

Whiskey just introduced in evidence, taken from the Steamer "Quadra" with the word "Corby" written on the sack.

WITNESS.—(Continuing.) I recognize this keg as one of the kegs that came from the "Quadra."

Whereupon it was stipulated by and between counsel that said keg contained more than one-half of one per cent of alcohol by volume and was fit for beverage purposes, such stipulation being subject to the objections heretofore made to the introduction of the exhibit in evidence.

Thereupon said exhibit was received in evidence and marked U. S. Exhibit No. 22.

Mr. GILLIS.—I now desire to call the attention of the Court and the jury to the marking on the end of this barrel, which says: "Alcohol, 65 O. P. Consolidated Distilleries Limited Cor." and then the words are blotted out on the other end, and then the word "Ontario." [152]

Cross-examination by Mr. GREEN.

This cargo has been in my custody since the 16th day of October, 1924, and it is intact. I did not check it over with the manifest from the ship, but checked it as it came to me into the storehouse, and it is still in the same condition as it was when I received it.

Redirect Examination by Mr. GILLIS.

Mr. GILLIS.—Q. Have you a list of the articles that were taken from these two boats, the "C-55" and the "Quadra"?

(Testimony of John Toland.)

A. No, I just have the list of the "Quadra."

Q. What was taken from the "Quadra"?

A. There were 7569 cases of whiskey, gin, beer, champagne, vermuth, cordial and chinese wine. 1873 bags of whiskey, gin, beer, champagne, vermuth, cordial and Chinese wine. 194 kegs alcohol. 129 barrels of whiskey. 104 cartons of Chinese wine.

Mr. GREEN.—Might the answer go out, if the Court please, for an objection?

The COURT.—You may make your objection and let it stand before the answer.

Mr. GREEN.—I object to the question on the ground that it is hearsay, and on all the grounds heretofore urged in the motion to exclude evidence made on behalf of my clients.

The COURT.—Objection overruled.

Mr. GREEN.—Exception.

(Rep. Tr., p. 168.)

WITNESS.—(Continuing.) The tag that was attached to the liquor taken from the "C–55" shows the amount of liquor seized off that boat, which was 89 sacks of wine, I believe, and one case of beer, broken.

(Rep. Tr., pp. 158–169, incl.) [153]

TESTIMONY OF PETER SARTES, FOR THE UNITED STATES.

PETER SARTES, a witness called on behalf of the United States, being first duly sworn, testified as follows:

(Testimony of Peter Sartes.)

My name is Peter Sartes and I am a member of the coast guard, with rank of chief boatswain's mate and officer in charge of the U. S. coast guard "Swift," and was such on the 11th day of October, 1924, at which time I was between Lime Point and Alcatraz Island. On that day, about 7:30 o'clock at night, I saw the motor-boat "903-B" between Lime Point and Alcatraz Island, about half a mile away from me when I saw it. The "903-B" had its lights on and I headed my vessel for it and caught up with her and put alongside of her.

Mr. CROWLEY.—Just a minute. The same objection that we have been making all along, your Honor.

The COURT.—Objection overruled.

Mr. CROWLEY.—Exception.

Mr. FAULKNER.—That is on behalf of all of the defendants?

The COURT.—Yes.

(Rep. Tr., p. 170.)

WITNESS.—(Continuing.) I ran alongside and I turned my searchlight on her and searched her; and at the forward hatch there were some barrels of alcohol. I gave my signal to this boat to stop by blowing my whistle a couple of times and they stopped. Jack Allen and Carl Nielsen were aboard this boat. The barrels that I found were down in the hold. There was nothing on the deck.

The writing that I saw on the barrels in the "903-B" looks the same as the writing that appears at the end of the barrel marked Government's Ex-

(Testimony of Peter Sartes.)

hibit No. 22. I do not know what the writing was at the end of the barrel. I merely know that it [154] contained alcohol. I saw some sacks in the after hold of the "903–B," but I did not notice any of the markings on the sacks. I also saw a few cases marked "Scotch Whiskey."

I took the "903–B" to Meiggs Wharf and turned it over to the Customs House and called up the police and had them arrest the two people that were aboard. I do not know whether I could recognize the men that were aboard or not. It was pretty dark that night and they were all dirty.

Cross-examination by Mr. HENNESSY.

The two men we found aboard the "903–B" look like those two fellows there. It was about 7:30 in the evening that the "903–B" was seized and it was dark. When I first saw the "903–B" it was between Lime Point Lighthouse and Alcatraz Island in the bay of San Francisco. I was on the San Francisco side of the bay at that time. None of the liquor that was on the "903–B" was visible nor was any of it above deck. The "903–B" is about 45 feet long and 9 feet abeam.

(Rep. Tr., pp. 170–174, incl.)

TESTIMONY OF JOHN TOLAND, FOR THE UNITED STATES (RECALLED).

JOHN TOLAND, a witness recalled for the United States, testified as follows:

I have examined the barrel marked "Seizure No. 27643." Said barrel was seized and taken from the

(Testimony of John Toland.)

"903–B." I first saw this barrel when it was taken to the Appraisers' Stores, but I never saw it on the "903–B," and of my own knowledge I do not know whether the barrel came from the "903–B" or not except from the ticket that came with it. [155]

Mr. HENNESSY.—We object to the testimony of this witness, Judge, on the ground that it is hearsay, and we move to strike it out.

The COURT.—The "903–B" was the one that Mr. Sortes testified to?

Mr. GILLIS.—Yes, your Honor.

The COURT.—The objection is overruled.

Mr. HENNESSY.—Exception.

(Rep. Tr., p. 175.)

Whereupon it was stipulated between counsel that said barrel contained alcohol in excess of one-half of one per cent by volume, or 94% alcohol by volume.

Mr. GILLIS.—Yes, I am offering it in evidence.

Mr. HENNESSY.—I desire to object to it on the ground that it is immaterial, irrelevant and incompetent, it has not been identified as coming from the "903–B," and, furthermore, it was seized as the result of an illegal and unreasonable search and seizure.

The COURT.—Objection overruled.

Mr. HENNESSY.—Exception.

Mr. FAULKNER.—We supplement that objection upon the ground that it is not binding on the officers and members of the crew, because there is no showing in the record that it was transferred—even giving it the worst construction—at a point

where the transfer was legal. Also the general objections heretofore made.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

(Rep. Tr., pp. 175, 176.)

Whereupon said exhibit was introduced in evidence and marked Government's Exhibit No. 23.

Mr. GILLIS.—I desire to call the attention of the Court and the jury to the marking on the end of the barrel, marked, "Alcohol, 65 O. P. Consolidated Distilleries, Ltd., Corbyville, Ontario." [156]

WITNESS.—(Continuing.) I have examined the case with the number on it, "355, Seizure No. 27643." This case came from the "903–B." It was delivered to me at the Appraisers Stores on October 13th. I do not know of my own knowledge whether it came from the "903–B" or not except for the ticket that accompanied it.

Whereupon it was stipulated that said exhibit contained more than one-half of one per cent of alcohol in volume and fit for beverage purposes.

Mr. HENNESSY.—Are you introducing it, Mr. Gillis? I will stipulate to the alcoholic content if you wish.

Mr. GILLIS.—Yes, that is all I ask you to stipulate to.

Mr. HENNESSY.—I object to it, Judge, upon the ground that it is immaterial, irrelevant and incompetent, no evidence to establish that it came from the "903–B," and, further, that it was seized

(Testimony of W. W. Hussey.)

as the result of an illegal and unreasonable search and seizure.

The COURT.—Objection overruled.

Mr. HENNESSY.—Exception.

Mr. FAULKNER.—The same objection on behalf of the remaining defendants, and an exception.

(Rep. Tr., pp. 176, 177.)

Thereupon said exhibit was received in evidence and marked U. S. Exhibit No. 24.

Mr. GILLIS.—I desire at this time to call the attention of the Court and Jury to the marks on the side of the box, "Bols," on the end "Bols" "Dry Gin, Product of Holland," and on the other end "Consolidated Exporters Corporation, Ltd., Vancouver." That is all.

(Rep. Tr., p. 177.)

(Rep. Tr., pp. 174–177, incl.) [157]

TESTIMONY OF W. H. HUSSEY, FOR THE UNITED STATES.

W. H. HUSSEY, a witness called on behalf of the United States, being first duly sworn, testified as follows:

My name is W. W. Hussey and I am a sales manager of the Bemis Bag Co. and have been such for the last year and four months. In September of 1924 I met Mr. J. Lloyd.

Mr. GILLIS.—Q. Did you make any sale to him of burlap bags?

Mr. FAULKNER.—Objected to on the ground, if your Honor please, that it is immaterial, ir-

(Testimony of W. W. Hussey.)

relevant and incompetent, and not binding upon any of the other defendants, and not within the issues of the case, and the proper foundation has not been laid for its introduction in evidence.

The COURT.—Is Mr. Lloyd a defendant?

Mr. GILLIS.—Mr. Lloyd is a defendant.

Mr. O'CONNOR.—He is not on trial.

Mr. GILLIS.—He is not on trial, but he is a defendant in this action.

The COURT.—I presume that you intend to connect this up.

Mr. GILLIS.—I do.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

Mr. O'CONNOR.—Exception.

Mr. CROWLEY.—Exception.

Mr. GILLIS.—Q. Did you make a sale to him on September 17, 1924? A. Yes, 13,000 bags.

Q. I show you an instrument and ask you what that is, Mr. Hussey?

A. That is the original order I wrote when he gave me the order.

Q. When who gave you the order?

A. Mr. Lloyd.

Q. And the order is for what?

A. 15,000 burlap bags. [158]

Q. Does it show on there the size of the bags?

A. Yes.

Q. What size are they?

A. 12,000 19½ to 27½, 3,000 17½ to 31.

Mr. GREEN.—Objected to, if your Honor please,

(Testimony of W. W. Hussey.)

as not being in the handwriting of the defendant charged, there is no proper identification of the person this order was sold to, as being one of the defendants in this case; the sale is really to the Lloyd Pacific Co., which has not been identified as being connected with any defendant in this case.

The COURT.—I presume that it will be connected up. Of course, if it is not, it will by no possibility do anybody any harm. Overruled.

Mr. GREEN.—Exception.

Mr. FAULKNER.—If the Court please, the instrument does not even purport to have been sold to a defendant in this case.

The COURT.—But the witness testified what he did; he sold it to *Hin.* Lloyd.

Mr. FAULKNER.—If that is a fact, then this instrument is of no value.

The COURT.—What is it, Lloyd Pacific Co.?

Mr. GILLIS.—It is Lloyd Pacific Co.

The COURT.—Is this a regular bill shipped in the regular course of business for that sale to Lloyd?

A. Absolutely, yes.

The COURT.—It will be admitted.

Mr. CROWLEY.—Exception.

Mr. FAULKNER.—Exception.

(Rep. Tr., pp. 177–179.)

Whereupon said exhibit was received in evidence and marked U. S. Exhibit No. 25.

WITNESS.—(Continuing.) I recognize the tag you show me, No. 2730, which is the delivery tag

(Testimony of W. W. Hussey.)

from the shipping department of our company for [159] 30 bales of bags, 500 bags to a bale.

Mr. GILLIS.—I ask that that be introduced and marked Government's Exhibit next in order.

Mr. CROWLEY.—Same objection.

The COURT.—That covers the bags included in this order? A. Yes.

Mr. GILLIS.—The same order number appears in each one?

A. I did not look at that, Mr. Gillis. I think it does.

Mr. FAULKNER.—The same objection, with the further objection that it shows it was not received by the party to whom the claim is made that the instrument was sold, and it could only be binding on the person whose name is subscribed to it, the one into whose possession they came.

The COURT.—Who is he?

Mr. GILLIS.—J. S. and some name beginning with "B."

Mr. FAULKNER.—Who he represents is not indicated there.

The COURT.—Q. At any rate, these were the bags which were sold to Mr. Lloyd, were they?

A. Yes.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

(Rep. Tr., pp. 179, 180.)

Whereupon said exhibit was received in evidence and marked U. S. Exhibit No. 26.

(Testimony of W. W. Hussey.)

WITNESS.—(Continuing.) With reference to Government's Exhibits 25 and 26, the number "2730" in the right-hand corner of each of these exhibits is the order number of the Bemis Bag Co. for that particular sale. The other small tag that you show me is the identification tag that comes from the factory to the shipping department, and the number stamped thereon, "2730," is the number by which the shipping clerk identifies the bale, and the mark of the Bemis Bag Co. is stamped on the [160] lower right-hand corner of the tag.

Whereupon said tag was marked U. S. Exhibit 27 for Identification.

(Rep. Tr., pp. 177–181, incl.)

TESTIMONY OF C. F. HOWELL, FOR THE UNITED STATES (RECALLED—CROSS-EXAMINATION).

C. F. HOWELL, a witness on behalf of the United States, recalled for further cross-examination, testified as follows:

Since I was on the witness-stand yesterday, I have ascertained the pitch of the propeller of the "Shawnee" and it is 11.7 feet. By that I mean that without resistance one turn of the propeller would tend to advance the vessel 11.7 feet. The pitch of the propeller minus the slip would not necessarily be the speed of the vessel. That would depend upon various elements. You usually account for any loss in difference between your calculated and your actual travel by accepting a larger or a smaller

(Testimony of C. F. Howell.)

degree of slip than is the standard. I would not say that the accepted formula for figuring the speed of a vessel from the revolutions would be the pitch of the propeller, times the revolutions, times 60, divided by 6080, which is the number of feet in a knot, minus the slip; that is not the accepted way of arriving at the speed of the vessel from the revolutions of the propeller. The accepted way is to take the vessel over a measured course, run her back and forward several times to get an average of the tide and water and current conditions, carefully check the elapsed time required to cover a measured mile, with the constant speed of your propeller, and the result will tell you the number of revolutions of the engine necessary to make a mile under the conditions that obtain at the time you ran the standardization. [161] I do not mean to convey that the formula that has been read to me is not the accepted one. My idea is to tell you the way the speed of the "Shawnee" is standardized, that is, by running her over a measured mile. I do not know whether the formula that you have suggested to me is the standard or accepted formula general among seafaring men. I would not say that it is not the standard.

(Rep. Tr., pp. 182–184, incl.)

TESTIMONY OF W. S. MORSE, FOR THE UNITED STATES (RECALLED).

W. S. MORSE, a witness on behalf of the United States, recalled for further cross-examination, testified as follows:

(Testimony of W. S. Morse.)

When the "Shawnee" approached the starboard side of the "Quadra" and rounded the "Quadra's" stern and approached on the port side of the "Quadra," I was on the flying bridge of the "Shawnee" at the peloruses. There are two peloruses on the "Shawnee" and they are on opposite sides of the flying bridge. At that time I was at the one on the port side. I at that time would be standing inboard and forward of the port pelorus, in order to take a bearing of Point Reyes. By the flying bridge I mean the top of the pilot house, and there are two peloruses and a binnacle there. The forward mast, or the foremast, comes up right forward of the wheel-house, and attached to the forward mast, just about on a level with the top of the wheel-house, is a searchlight which I imagine is about 36 inches in diameter, or perhaps 30.

I entered the coast guard service last August, and before that time I was with Libby, McNeill & Libby, and previous to that I was an officer in the United States navy for five years, with the rank of lieutenant. I am not a graduate of the Naval [162] Academy, but I took the war course there and graduated from the New York Nautical School in 1907.

(Rep. Tr., pp. 184, 185.)

TESTIMONY OF J. J. PARKER, FOR THE UNITED STATES.

J. J. PARKER, called on behalf of the United States, being first duly sworn, testified as follows:

My name is J. J. Parker, and I am the traffic manager of Bemis Bros. Bag Co., San Francisco. I do not know a man by the name of Lloyd personally. I received a communication with reference to order 2730, shown here on Government's Exhibit 26 on September 25, 1924.

Q. What were those instructions that you received?

Mr. FAULKNER.—I object to that on the ground that it is immaterial, irrelevant and incompetent, not binding on any of the defendants, and a transaction had or intended to be had with some person not before the Court, and not binding upon any defendant in this case, and the proper foundation has not been laid.

The COURT.—The objection is overruled.

Mr. FAULKNER.—Exception.

(Rep. Tr., pp. 185, 186.)

A. To deliver 15,000 bags that we had on hand between Pier 18 and 20 and have the teamster see Captain Sam. I know that the 15,000 bags called for by order 2730 left the Bemis Bag Co. on that day.

(Rep. Tr., pp. 185–187, incl.)

TESTIMONY OF CHARLES STEWART, FOR THE UNITED STATES.

CHARLES STEWART, a witness called on behalf of the United States, being first duly sworn, testified as follows: [163]

My name is Charles Stewart, and I am a teamster employed by the Overland Freight & Transfer Co. and was such on September 25, 1924. I received on that day from the Bemis Bag Co. the bags called for in the order Government's Exhibit No. 26. There were 30 bales of bags.

Q. Where did you take those bags?

Mr. FAULKNER.—The same objection, if your Honor please.

The COURT.—The same ruling.

Mr. FAULKNER.—Exception.

A. To pier 22.

(Rep. Tr., p. 188.)

WITNESS.—(Continuing.) I delivered them to the gentleman that signed the receipt and they went on the "California." The motor-boat was there and the person who signed the receipt came from the motor-boat "California."

(Rep. Tr., pp. 187, 188.)

TESTIMONY OF E. E. ENLOW, FOR THE UNITED STATES.

E. E. ENLOW, a witness called on behalf of the United States, being first duly sworn, testified as follows:

My name is E. E. Enlow and I am a Special

(Testimony of E. E. Enlow.)

Agent of the Treasury Department of the Government and have been such for five or six years. On the 13th, 14th or 15th days of October I had occasion to visit the steamer "Quadra" in San Francisco Bay. I recognize the tag marked Government's Exhibit 27 for Identification. Mr. Creighton gave me that tag, but I did not receive the tag when it was originally gotten.

(Rep. Tr., pp. 188, 188½.) [164]

TESTIMONY OF GEORGE B. RICHARDSON, FOR THE UNITED STATES.

GEORGE B. RICHARDSON, a witness called on behalf of the United States, being first duly sworn, testified as follows:

My name is George B. Richardson and my position with the Government is an inspector of customs. On the 23d day of October, 1924, I visited the steamer "Quadra." I have seen Government's Exhibit No. 27 for Identification. I took that tag from a bale of sacks that I found in the forward hold of the steamer "Quadra."

Mr. GILLIS.—I now offer, ask that Government's Exhibit No. 27 for Identification be introduced in evidence.

Mr. FAULKNER.—We object to the introduction of the tag in evidence, if the Court please, as to the officers and members of the crew of the "Quadra" on the ground that it is the result of an illegal seizure. The point of the objection is more

(Testimony of George B. Richardson.)

fully covered by the motion to exclude evidence heretofore presented to your Honor. On behalf of the remaining defendants it is objected to on the ground that it is immaterial, irrelevant and incompetent and hearsay and the proper foundation has not been laid, and also as self-serving.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

(Rep. Tr., p. 189.)

Whereupon said tag Government's Exhibit No. 27 for Identification was received in evidence and marked U. S. Exhibit No. 27.

(Rep. Tr., p. 189.)

TESTIMONY OF PAUL J. DOYLE, FOR THE UNITED STATES.

PAUL J. DOYLE, a witness on behalf of the United States, first being duly sworn, testified as follows:

My name is Paul J. Doyle and I am with the Customs Service, and was present when the cargo of the "903–B" was unloaded after the seizure. We have a U. S. Customs wagon, owned by the Government, to transport all packages in charge of customs officer. There were 62 ten-gallon kegs of alcohol.

(Whereupon it was stipulated by and between counsel that the [165] barrels of alcohol that were pointed out to the jury by Mr. Toland as coming from the "903–B," were the same barrels of alcohol that this witness identified were moved

(Testimony of Paul J. Doyle.)

to the customs-house. It was further stipulated that 28 sacks of Scotch whiskey and 10 cases of Bols gin were taken from the "903–B" and delivered to the customs-house.)

On the 15th day of October I was on board the "Quadra," that is, after the seizure. I saw the same type of liquor on the "Quadra" that I saw on the "903–B," that is the marks, type and stencils were the same in appearance. I accompanied the last load from the "903–B" to the Appraisers Building with Inspector Smith.

Cross-examination by Mr. GREEN.

When I saw the "903–B" she was tied up at Meiggs Wharf. Mr. Smith and myself rode in his car following the customs truck, and Mr. Toland was on the platform and signed personally for that particular load of liquor. The cases of Bols gin that I saw on the "903–B" and those that I saw on the "Quadra" have no designating marks other than the marks placed upon the boxes by the manufacturer, but the barrels did. I do not claim that all the Bols gin in San Francisco came from the "Quadra," but when coupled with the presence of alcohol on the "Quadra," I do claim that this Bols gin being in the same boat, came from the "Quadra." This boat came in, was taken, its load was left intact, it was brought alongside, and if I am not right to the hour it was the next day that it was sealed by the Customs Officer under regular government seals across the hatches, and nothing

(Testimony of Paul J. Doyle.)

was done to the load until I went down with Captain Head, Inspectors Richardson and Smith and a couple of guards, and we then stripped the seals off and began unloading. The boat was probably in at the dock over night before we began.

I would say that 62 boxes and sacks and barrels were [166] unloaded. I have no recollection of the number accurately, except by reference to the receipts and checks.

We unloaded the "C–55" just prior to that and ran the truck all afternoon. The similarity between the barrels of liquor found on the "903–B" and those on the "Quadra" was that they were marked "J. D. & Co., San Salvador"—"La Libertad, San Salvador." This marking was stenciled with a regular stencil and was on all of the barrels that I noticed, but I didn't see it on anything else. On the other end of the barrel and on the top of the barrel these marks occurred and each one had a cargo piece marked serially from, say, 100 to 500, running in numerical serial to identify individual pieces of the cargo. On the other side was "Consolidated Distilleries Company of Corbyville, Ontario," I believe, but I am not sure on that point.

I also unloaded the "C–55" in the same manner. I unloaded sacks from the "C–55," a number of which were marked "Corby" with the stenciling brush. I saw similar sacks on the "Quadra." The two markings on the barrels taken from the "903–B" and those on the "Quadra" agreed, that

(Testimony of Paul J. Doyle.)

is, they contained "J. D. & Co., La Lib., San Salvador, Barrel No. 224," with the gross, tare and net, and burned brands appeared on most of the barrels. The burned brand was "E X P N." The sacks that you show me are the same sacks that I saw on the "C–55" and the "Quadra."

(Rep. Tr., pp. 190–196, incl.)

TESTIMONY OF E. J. SMITH, FOR THE UNITED STATES.

E. J. SMITH, a witness called on behalf of the United States, first being duly sworn, testified as follows:

My name is E. J. Smith and I am an inspector of customs. I was present on the occasion, with Mr. Doyle, when the [167] "C–55" and the "903–B" were unloaded, and I personally accompanied the cargo to the appraisers building. I followed the customs truck in my automobile.

(Rep. Tr., pp. 196, 197.)

TESTIMONY OF E. MAGRUDER, FOR THE UNITED STATES.

E. MAGRUDER, a witness called on behalf of the United States, first being duly sworn, testified as follows:

My name is Edward Magruder and I reside in San Francisco at present. I am not charged in this indictment, but am willing to tell the Court and jury what I know about this particular case.

Mr. RIORDAN.—Q. Has any Government officer promised you anything for your testimony in this case?

Mr. FAULKNER.—I object to that as immaterial, irrelevant and incompetent, no proper foundation laid, until the record shows whether the defendant or the witness on trial is charged with a criminal offense.

The COURT.—The rule goes much farther than that; the rule goes to any testimony that would tend to convict him of a felony, even though no charge has been brought; and, furthermore, it goes to the question as to whether or not he is testifying under a promise of reward, or under duress. The objection is overruled.

Mr. FAULKNER.—Exception.

(Rep. Tr., p. 198.)

No Government official has promised me anything for my testimony in this case, nor has any Government officer threatened me in any manner.

Mr. RIORDAN.—Q. Have you ever visited the steamer "Quadra"?

The COURT.—Just a moment, Mr. Magruder, I want to instruct [168] you at this time that it is your constitutional right to refuse to testify to anything which will tend in any manner to incriminate you, yourself, and that if the testimony you are about to give shall tend in any way to involve you in this transaction, or any illegal transaction, which might result in your own arrest—that you

(Testimony of E. Magruder.)

have the constitutional right to decline to testify to it if you so desire. Do you understand that?

A. Yes.

Q. Now, with the knowledge that that is so, are you willing to testify? A. Yes.

Mr. FAULKNER.—I now move that all of the responses to your Honor's questions and Mr. Riordan's questions be stricken out on the ground that they are self-serving, and incompetent for that reason.

The COURT.—The motion is denied.

Mr. FAULKNER.—Exception.

Mr. GREEN.—Might I ask the witness two or three questions before he starts to testify?

The COURT.—No, you can question him on cross-examination.

Mr. GREEN.—It goes to his state of mind.

The COURT.—I have done so. You have no right, whatever, to object, Mr. Green. The privilege of a man to decline to testify on the ground that it would tend to incriminate him is a personal privilege for him, and is one that does not concern any other human being. The request is denied.

Mr. GREEN.—How about the coercion, that is different.

The COURT.—Go ahead, Mr. Riordan.

Mr. GREEN.—Exception. If your Honor please, I offer at this time to show by the witness himself that he is under the coercion of the customs authorities.

(Testimony of E. Magruder.)

The COURT.—You may do that on cross-examination. [169]

Mr. GREEN.—Exception.

Mr. RIORDAN.—Read the question.

(Rep. Tr., pp. 199, 200.)

I have visited the steamer "Quadra," and the first time I visited it was about the 20th or 23d or 24th of September, 1924. I went to the "Quadra" by means of a power-boat, the "Viz 4." With me at that time was an engineer named Glance, and there was another man whose name I think is Ross.

Q. Now, were you going to the "Quadra" for any particular purpose?

Mr. FAULKNER.—The same objection.

The COURT.—The same ruling.

Mr. FAULKNER.—And, further, it is not within the issues of this case, that it is not a boat claimed in the indictment to have been used for the purpose of consummating any conspiracy charged.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

(Rep. Tr., p. 201.)

I was going to the "Quadra" for a particular purpose, that is to get a cargo of liquor. I made no arrangements with anybody before going out there for this cargo, but I had been sent by somebody else to get the liquor.

Mr. RIORDAN.—Q. Who? A. Sam Terry.

Mr. FAULKNER.—I move to strike that out as not binding on any defendant in this case, the person claimed to have sent this man to the

"Quadra" is neither a defendant nor a party interested in the proceeding, and any transaction between this witness and Mr. Terry is purely hearsay and not binding on any of the defendants.

The COURT.—It is perfectly apparent that there are two [170] answers to your objection; first is concerning the question as to whether or not this vessel was hovering on our shore for the purpose of delivering liquor here, as bearing upon the legal question, and the second is that it is elementary in the law of conspiracy that a conspiracy may be with others not named. So the objection is overruled.

Mr. FAULKNER.—Exception.

Mr. RIORDAN.—Q. Had you had any prior arrangement about landing liquor from boats similar to the "Quadra" prior to this mission?

Mr. FAULKNER.—The same objection, and the further objection that it is immaterial, irrelevant and incompetent if this man landed liquor from any number of boats other than the "Quadra."

Mr. RIORDAN.—I think I can show his connection, if I am given an opportunity.

Mr. GILLIS.—I do not understand that we are confined in this conspiracy to the "Quadra" alone.

Mr. FAULKNER.—Read the indictment.

Mr. GILLIS.—That is simply one of the overt acts.

Mr. FAULKNER.—There is no other overt act alleged in the indictment, except overt acts founded on transactions with the "Quadra."

The COURT.—Basing the ruling on various decisions of the United States Courts of Appeal throughout the country, I held in the case of this very man Terry, whose name is exceedingly familiar to me, and I think he was out on bail from a conviction in this court—I held in his very case that it was competent on a charge of conspiracy to land liquor to show other instances as bearing upon the general scheme or purpose. I founded that ruling upon a decision of the House of Lords, upon several decisions of the Courts of Appeal [171] of the various circuits, and a decision of the Supreme Court of California, People vs. Gray, and the reasoning of Prof. Wigmore in his chapter upon the subject, and, curiously enough, the reasoning adopted by the House of Lords, the Courts of Appeal, and the Supreme Court of California was identically the same, although, in no one of the cases, did they refer to or seemingly have knowledge of the others. It seems to me perfectly apparent that in view of those authorities, and from the point of view of reason, that where men are charged with conspiracy to do a particular act, that it is a question, necessarily, of general or common design. In the case in the House of Lords, for instance, a man was charged with illegal operations; it was claimed that the operation was legal, and the Crown was permitted to show that he had performed other illegal operations.

Mr. FAULKNER.—Might I interrupt right there, if this witness was a defendant in that pro-

(Testimony of E. Magruder.)

ceeding it would be competent to show that he was engaged in rum running with other vessels.

The COURT.—What difference does that make?

Mr. FAULKNER.—What difference does it make if a man who is not a party to this proceeding was a rum runner to other boats?

The COURT.—I assume that his landing was in connection with some defendant here.

Mr. FAULKNER.—The Court has to assume it from something not in the record.

Mr. RIORDAN.—It takes time to connect this up.

The COURT.—I will overrule the objection. If it is not connected up, it will be stricken.

Mr. GREEN.—I respectfully assign the Court's remarks regarding the prior conviction and being on bail at the present time of Sam Terry as prejudicial, and ask that the jury be instructed to disregard them. [172]

The COURT.—Yes, you are correct about that. You will disregard that, Gentlemen of the jury.

Mr. RIORDAN.—Read the question.

(Last question repeated by the reporter.)

A. Yes.

Q. What other boat prior to the "Quadra"?

A. The "Malahat."

Mr. FAULKNER.—The same objection.

The COURT.—The same ruling.

Mr. FAULKNER.—Exception.

(Rep. Tr., pp. 202-204.)

I had connection with the "Malahat" about a

(Testimony of E. Magruder.)

week or ten days prior to my first trip to the "Quadra." I made one trip to the "Malahat." I got to the "Malahat" by means of a gas power-boat, the "Viz 4." The "Malahat" was lying about 21 miles southwest of Point Reyes.

Q. What did you do when you got there?

Mr. FAULKNER.—The same objection, and the further objection, if your Honor please, that the witness has indicated a point where any transfer of liquor to him was legal, as far as the "Malahat" was concerned.

The COURT.—Of course, I do not agree with you at all. The objection is overruled.

Mr. FAULKNER.—Exception.

(Rep. Tr., p. 205.)

I took the 650 cases of liquor from the "Malahat" in sacks and landed them at Russian Gulch, which is about 1½ miles the other side of Mendocino City.

Mr. RIORDAN.—Q. What was your interest in landing that? Did you get anything for it?

Mr. FAULKNER.—The same objection, and leading, and no [173] foundation laid, and not binding upon any defendant in this proceeding.

The COURT.—Overruled.

Mr. FAULKNER.—Particularly leading.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

(Rep. Tr., p. 207.)

I received $100.00 a week for landing the liquor. The money was paid to me by Terry. About the

(Testimony of E. Magruder.)

20th or thereabouts of September I went to the "Quadra" in the night-time and tied up to the stern of her for a while and then cast loose and drifted throughout the night, and the next morning I ran alongside of the "Quadra" and loaded liquor, I think about 400 sacks, and took it to Russian Gulch.

Mr. FAULKNER.—May a general objection go to the entire testimony of the witness concerning his contact and conduct with the "Quadra"?

The COURT.—I think that would cover it.

Mr. FAULKNER.—Is that satisfactory to you?

Mr. RIORDAN.—Whatever the Court's ruling is.

The COURT.—It will be the same ruling, and you will have your exception.

(Rep. Tr., pp. 208, 209.)

All of the men aboard the "Quadra" were active in loading liquor to my boat, and at that time I was introduced to the Captain of the "Quadra." His name is Ford. I think that the captain of the "Quadra" at that time was running the winches.

After I had my load I cast off and left the side of the "Quadra" about daybreak and arrived at Russian Gulch in the morning and laid around all day and did not go in until night. I made two [174] or three or four more trips to the "Quadra," I think, and on all the trips pursued the general course I have outlined. Approximately, I should say, in all I have taken about

(Testimony of E. Magruder.)

1,500 cases from the "Quadra." The name of the captain of the "Malahat" is Murray.

Cross-examination by Mr. GREEN.

I remember meeting Mr. Green in the City Hall sometime ago and riding down on the McAllister Street car with him and I had a conversation with him at that time. Mr. Green asked me what I was doing and I told him a little longshoring. I did not tell him that I was doing nothing because the customs people had me tied up and scared to death, and that I could not make a move. I did not tell him that.

Representatives of the Government first talked to me about this case on the 31st of December. I understood they were looking for me and saw a piece in the paper that I had been arrested so I went up to find out what it was about. I have never been served with a warrant, and I have never been placed under bond. When I went to the Customs House I talked to Mr. Creighton. When I went there I kind of thought they knew something and rather than dodge them all the time they were looking for me I thought if I had anything coming I would take it and get it over with.

Mr. Creighton did not call my attention to the fact that they had it on record that I made these trips to the "Quadra." Mr. Creighton asked me to tell my experience while I was on the "Viz 4" from the time she changed her name, and I told him my story. I don't know whether Mr. Creighton knew what I had been doing with the "Viz 4"

(Testimony of E. Magruder.)

or not. Mr. Creighton did tell me about the trip on the 20th of September, that is he said he knew I made a trip to the "Quadra" then. I cannot say that he told me about any other trips, nor did he tell me that a warrant had been issued for my arrest, nor [175] did he tell me that he had evidence enough to arrest and prosecute me, nor did he tell me he knew all about my trips. I imagined he knew about them.

I have testified before the grand jury with reference to my operations in landing liquor. I do remember that I signed a paper saying that I waived my constitutional rights and my right to immunity, but that was not at the time I testified before the grand jury.

(Rep. Tr., pp. 198–214.)

TESTIMONY OF HERBERT J. CLANCE, FOR THE UNITED STATES.

HERBERT J. CLANCE, a witness called on behalf of the United States, first being duly sworn, testified as follows:

My name is Herbert J. Clance. I have not been charged as a defendant in this action, but I am willing to tell the Court and jury what I know about the facts in this case.

Q. Have any offers of reward or promise of immunity been made to you by any Government officers? A. No.

Mr. FAULKNER.—We object to that on the same grounds.

(Testimony of Herbert J. Clance.)

The COURT.—The same ruling.

Mr. FAULKNER.—Exception.

(Rep. Tr., p. 214.)

Neither Mr. Creighton nor anyone else in his department threatened me or told me that I was going to be arrested. I was down on Pier 9 when a gentleman came down from the office and told me that I was needed at the customs-house. I then went up to the customs-house.

(Whereupon the witness, after being advised of his constitutional right to refuse to testify by the Court, expressed his willingness to testify.) [176]

Mr. RIORDAN.—Q. Have you any idea of what date that was?

A. Well, it was somewhere around the 20th of September.

Q. Now, did you help get the cargo on board of the "Viz-4"? A. Yes.

Mr. FAULKNER.—If your Honor please, may an objection be noted in the record prior to the answer to the question?

The COURT.—Yes.

Mr. FAULKNER.—Upon all of the grounds indicated in the objections to the testimony of Mr. Magruder, and I ask the Court at this time that it may be considered that all testimony that this witness is about to give concerning his contact with the "Quadra" be deemed objected to by each and all of the defendants, and the objection overruled and an exception noted.

The COURT.—Yes.

(Testimony of Herbert J. Clance.)

Mr. FAULKNER.—In the interest of expedition.

Mr. RIORDAN.—Q. Did you go with Mr. Magruder to the landing place where he testified the liquor was landed? A. Yes.

Q. Prior to going to the "Quadra," had you made any visit to any other boat about that time for liquor?

Mr. FAULKNER.—The same objection as was made in the testimony of Mr. Magruder.

The COURT.—The same ruling, yes, for the present.

Mr. FAULKNER.—And an exception to the ruling.

(Rep. Tr., pp. 215, 216.)

I think I made the first trip to the "Malahat." I went on all the trips that Magruder was on. There was another man on that trip, whose name I don't remember.

Cross-examination by Mr. GREEN.

I testified before the grand jury in connection with bringing in liquor from boats out at sea in this case. I cannot [177] recall the date that I first was taken to the customs-house by the Customs officer whom I have described. At the customs-house I saw Mr. Creighton. He asked me if I was on the "Viz–4" and I said, "Yes" and he told me that he knew about the trip of the "Viz-4" to the "Quadra."

I have not been arrested in connection with this case, nor am I under bond, nor have I ever been

(Testimony of Herbert J. Clance.)

indicted. I don't know what the Government would do to me if I refused to testify in this case.

The only written statement I remember giving was about my being on the boat that took liquor from the "Quadra." I gave that statement to Mr. Creighton and I was alone with Mr. Creighton when that statement was signed. I did not sign a waiver of immunity at the time I testified before the grand jury.

I have been doing nothing since I went up to see Mr. Creighton.

Rep. Tr., pp. 214–218.) [178]

TESTIMONY OF SAM CRIVELLO, FOR THE UNITED STATES.

Thereafter SAM CRIVELLO, a witness called on behalf of the United States, and being first duly sworn, testified as follows:

(Questions by Mr. RIORDAN.)

My name is Sam Crivello and I reside in San Francisco. I am one of the defendants charged in this indictment. I pleaded guilty to the charge in this indictment, but originally had pleaded not guilty.

I have told the Government officers what I know about this case and first talked to them about a month ago. My statement was made freely and voluntarily, without any promise of reward or immunity, and without being threatened in any manner by the Government officers.

(Testimony of Sam Crivello.)

I know Vincent Quartararo, one of the gentlemen here in the courtroom, and have known him for a good many years and have been employed by him.

Mr. COGHLAN.—We object to that as not relevant, competent or material, and upon the ground that no proper foundation has been laid for it.

The COURT.—It is impossible to tell, Mr. Coghlan. If he hired him to spade up his garden, it could not hurt you any. I anticipate that the Government intends to lead up to something connected with this case.

Mr. RIORDAN.—That is true.

The COURT.—Overruled.

Mr. COGHLAN.—Exception.

(Rep. Tr., pp. 219, 220.)

Vincent Quartararo first employed me to work for him about April or May of 1924. [179]

Q. What was the work that he employed you to do?

Mr. CROWLEY.—Exception.

Mr. COGHLAN.—We object to the question as immaterial, irrelevant and incompetent, calls for hearsay, no proper foundation has been laid for it, particularly no proper foundation connecting the incident intended to be adduced with the matter alleged in this indictment, that it is not within the issues of the case, and is an attempt to prove an overt act or overt acts prior to the establishment of a conspiracy, if there be any conspiracy; that it is

(Testimony of Sam Crivello.)

not binding upon the defendant Quartararo, nor upon any of the defendants here.

The COURT.—What is your point, Mr. Coghlan, with regard to foundation?

Mr. COGHLAN.—There has been no foundation here showing a connection of Quartararo with the commission of any offense against the United States, nor has there been any connection between him and the conspiracy, the objects of which are recited in the indictment.

The COURT.—Overruled.

Mr. COGHLAN.—Exception.

Mr. RIORDAN.—Read the question.

(Last question repeated by the reporter.)

A. Carrying liquor.

Mr. COGHLAN.—We move that that be stricken out as too vague, indefinite, uncertain, as not binding upon this defendant, or any of the other defendants in this case.

The COURT.—Motion denied.

Mr. COGHLAN.—Exception.

Mr. RIORDAN.—Q. Did you talk with him on the arrangement of carrying liquor? Answer that "Yes" or "No." A. Yes.

Q. How were you to carry the liquor? [180]

Mr. COGHLAN.—We offer the same objection as to that, if it please your Honor, and upon the further ground that there is not, and, obviously there is not any foundation or connection between this employment and anything that pertains to the

(Testimony of Sam Crivello.)

issues raised by the plea of not guilty to this indictment.

The COURT.—Overruled.

Mr. COGHLAN.—Exception.

Mr. RIORDAN.—Read the question.

(Last question repeated by the reporter.)

A. By gasoline launch.

Q. What was the name of the gasoline launch?

A. "California."

Mr. COGHLAN.—The same objection runs to that, and your Honor will allow me the same exception?

The COURT.—Yes.

Mr. RIORDAN.—Q. Where did you get the "California" from? A. From Sausalito.

Mr. COGHLAN.—We object to that as not relevant, material, or competent, and as having no bearing upon the issues of this case, and as not connected with this defendant, and having to do with other people that are not concerned here, or with whom this defendant, or any of these defendants, is concerned or are concerned.

The COURT.—Overruled.

Mr. COGHLAN.—Exception.

Mr. RIORDAN.—Q. From whom in Sausalito did you get the boat "California"?

Mr. COGHLAN.—The same objection and exception.

A. Well, he gave me the keys to the pilot-house.

Q. Who gave you the keys? A. Vincent.

Q. Vincent who? A. Quartararo.

(Testimony of Sam Crivello.)

Mr. COGHLAN.—The same objection, and I presume the same ruling and exception, your Honor. [181]

The COURT.—Yes, the same ruling.

Mr. RIORDAN.—Q. Did you go out in that boat for liquor or not? Answer "Yes" or "No."

A. Yes.

Mr. COGHLAN.—Just a minute. Will your Honor allow the objection heretofore made to apply to that, and an exception?

The COURT.—Yes.

Mr. RIORDAN.—Q. Where did you go to?

Mr. COGHLAN.—The same objection and exception.

A. Outside of the Farallones.

Mr. RIORDAN.—Q. Outside of the Farrallones?

A. Yes.

Q. To what boat, first, if you went to any boat?

Mr. COGHLAN.—Just a minute. We object to that as not relevant, material or competent, upon the ground that no proper foundation has been laid, and upon the further specific ground that it may involve something that has absolutely nothing to do with the commission of any offense charged in this indictment, and that it is the duty of the district attorney first to show by a proper foundation that there is any such connection, if there be.

The COURT.—Overruled.

Mr. COGHLAN.—Exception.

Mr. RIORDAN.—Read the question.

(Last question repeated by the reporter.)

(Testimony of Sam Crivello.)

A. The first boat, you want to know?

Q. Yes. A. That was the steamer "Norburn."

Q. And after that—

Mr. COGHLAN.—We move that that be stricken out as having nothing to do with the controversy here before us, and as having nothing to do with these issues, and no proper foundation laid.

The COURT.—I will ask him a question first: Did you go to the steamer "Norburn" for liquor?

A. Yes.

Q. Did you get liquor there? A. Yes. [182]

Q. What did you do with it when you got it?

A. Took it ashore.

Q. Who did you deliver it to?

A. Vincent Quartararo.

Q. The defendant Quartararo? A. Yes.

The COURT.—Motion denied.

Mr. COGHLAN.—We now move that the matter be stricken out which your Honor elicited, on the same grounds interposed and underlying the motion that we last made.

The COURT.—Motion denied.

Mr. COGHLAN.—Exception.

Mr. RIORDAN.—Q. Approximately what time of the year, and what year was that? A. 1924.

Q. Do you know the month?

A. About April or May.

Q. April or May? A. Yes.

Q. Have you any idea as to what you brought in?

The COURT.—You mean from the "Norburn"?

Mr. RIORDAN.—From the "Norburn."

Mr. COGHLAN.—In April or May, 1924?

Mr. RIORDAN.—Yes.

Mr. COGHLAN.—We object to that on all of the grounds interposed, that it is not relevant, material or competent, and there is no proper foundation that has been laid, and I call your Honor's attention particularly to the fact that the treaty between the United States and Great Britain was made May 22, 1924, and that that is pleaded in the indictment.

The COURT.—It could not make any difference. These defendants here are charged with a conspiracy. Now, under familiar principles, if the conspiracy took place at another time, or under equally familiar principles, if there was a conspiracy between the defendant Quartararo and this defendant, it would be sufficient to convict, and it would be sufficient to convict whether it were before or after the time that the treaty was negotiated between the [183] United States and Great Britain. Furthermore, it is equally apparent to me, from all of the authorities which I had occasion to review in a previous opinion in this case that if there was a crime committed, and it was committed partly without, if it was beyond the limits which might be specified in any case,—it was committed partly without and partly within this jurisdiction, and, therefore, it makes no difference whatsoever, so far as this part of it is concerned, at least, whether or not the liquor was obtained outside an hour's steaming, or four marine leagues, or whatever it is.

Mr. COGHLAN.—Of course, the position that I personally take, if I may briefly state it, is this, that an accusatory paper of this character must inform the defendants of the particular conspiracy with which they are charged, and that it is not proper for the district attorney to allege matters such as are contained here, and which exclusively relate to the transaction affecting one vessel, to wit, the "Quadra," and surprise us by bringing into court matter that has absolutely nothing to do with the conspiracy that is attached to and woven around about and made a part of what occurred upon the "Quadra," and what occurred between this shore and the "Quadra" and no other vessel. It seems to me this ought to apprise my client, and the other defendants, here, of what they are brought into court to defend themselves against, and it would be impossible if it were the claim of the prosecution here and your Honor shoud sustain that claim, that any offense committed against the laws of the United States in connection with the prohibition act, or the Tariff Act of 1922 might be imported here for us to defend; absolutely impossible, our hands would be tied. We are only guided by this instrument, and so have we been guided, and we have thought that the proof of the prosecution would be, except in so far as it bore upon the issues here that were raised by the combination, of the accusation of the conspiracy, and the references to the particular vessel [184] involved; it would be

(Testimony of Sam Crivello.)

impossible for us to defend unless we depended upon that. That is the position that I take.

The COURT.—I do not know, Mr. Coghlan, to what extent your researches have gone in the matter of authorities, but the rule is thoroughly well settled in this court without a single dissent, and has been so often presented here, for instance, in the Nan Patterson Case, in the recent case of the policemen that were here, and in a dozen other cases, that the thing, after all, is the conspiracy, and the defendants, having been apprised that the Government charged that they had entered into a conspiracy to violate certain statutes that any acts which were in violation of those statutes and which concerned any of the defendants, and any other person, or more than one person, so that it would constitute, under the law, a conspiracy, is admissible. We have had that here many times. The authorities are perfectly clear upon this subject, and the reasoning is equally clear; and it is equally well settled that where the indictment may charge a single overt act, that any number of overt acts which are in pursuance of it, or in connection with the conspiracy, are admissible. The objection is overruled.

Mr. COGHLAN.—Exception.

Mr. RIORDAN.—Will you read the last question?

(Last question repeated by the reporter.)

A. A load of liquor.

Q. Where did you deliver that liquor?

(Testimony of Sam Crivello.)

A. Oakland Creek.

Q. I believe you have already answered his Honor that you delivered it there to Mr. Quartararo?

A. Yes.

Mr. COGHLAN.—We move that this testimony respecting this bringing in of the liquor be stricken out on the ground that if it affects any conspiracy or any violation of the law, that it has nothing to do with the issues here involved, and we make that objection on behalf of all of the defendants, and each one of them [185] separately.

The COURT.—Overruled, and motion denied.

Mr. RIORDAN.—We reserve an exception.

(Rep. Tr., pp. 220–226.)

A. After I delivered the liquor in Oakland Creek I took the "California" out to the "Malahat."

Mr. COGHLAN.—I presume that my objection goes to this?

The COURT.—I think so. I think you have saved the point, if it is good.

(Rep. Tr., p. 227.)

I made contact with the "Malahat" about the beginning of August 1924. I went on the "California." The crew comprised just one man beside myself, a man by the name of Dave Worrick. He was my engineer and was recommended by Vincent Quartararo.

Mr. COGHLAN.—We now ask that your Honor allow an objection to go to that, that we made heretofore.

The COURT.—Yes.

(Testimony of Sam Crivello.)

Mr. COGHLAN.—And the same exception.

The COURT.—Yes.

(Rep. Tr., p. 227.)

Worrick lives in Alameda or Berkeley, either one of those towns. I attempted to ascertain from the officers where he was. I tried many days to locate him but could not do so. I made contact with the "Malahat" about the beginning of August, 1924. In all I made approximately eight trips to the "Malahat," and used the motor-boat "California" on all these trips. I brought back from the "Malahat" on each trip about the same cargo, on an average about 800 to 1,000 cases on each trip; that is, cases and barrels together, and I brought these to Oakland Creek. I made a trip in the "California" to the "Quadra" the early part of September, 1924.

Q. Just tell us about that trip, will you please? [186]

Mr. COGHLAN.—We object to that on the same grounds heretofore interposed, immaterial, irrelevant and incompetent, and on all of the grounds heretofore interposed.

The COURT.—Objection overruled.

Mr. COGHLAN.—Note an exception.

(Rep. Tr., p. 230.)

I don't know the amount, but it was for the purpose of completing the full order that I had to go to the "Quadra." I loaded up over at the "Malahat" but there was not enough for the load so the captain of the "Malahat" gave me a slip contain-

(Testimony of Sam Crivello.)

ing an order for 49 or 50 cases to complete the order. I went over to the "Quadra" and had that order filled. I thereupon took the load to San Francisco and delivered it in Oakland Creek to Vincent Quartararo.

Q. Did you meet another party over at Vincent's place of business who was introduced to you by Vincent as C. H.? A. Yes, sir.

Mr. COGHLAN.—That is of course a leading question and suggestive of an answer and puts the answer clearly in the mouth of the witness.

The COURT.—Objection overruled.

Mr. COGHLAN.—Exception.

(Rep. Tr., p. 231.)

Quartararo introduced me to C. H. I now see C. H. in the courtroom and I point out the first one at the corner in the last row as the gentleman. (Witness indicating the defendant C. H. Ballinger.) I just saw him the once, and it was in September I believe, of 1924, and I had a conversation with him about loading on the "Quadra," that is about bringing out some empty sacks to the "Quadra." Mr. Belanger asked me if I would take them out and I said "Yes."

Mr. COGHLAN.—We move that that be stricken out as not responsive to the question, and we ask for the additional objection that it is hearsay, and not material, relevant or competent, and no [187] proper foundation for it.

The COURT.—Motion denied.

(Testimony of Sam Crivello.)

Mr. COGHLAN.—Exception.

(Rep. Tr., pp. 232, 233.)

I took the sacks out to the "Quadra" but did not land them there because of the guard rail on the "Quadra," and I therefore took them to the "Malahat" and left them there. I originally got them at Pier 22, or perhaps 20. I do not know who delivered them to the pier, but they were on board the "California," my boat, when I got there. During my trips out there I saw other boats meeting the "Malahat" and "Quadra," such as the "Ocean Queen," the "Viz 4" and another boat which had no name, and also the "Florence." Of these boats I actually saw the "Ocean Queen" receive cargo from the "Malahat" and the "Quadra." I first met the captain of the "Quadra" when I gave him the slip that the captain of the "Malahat" gave me. I pick him out in the courtroom as the man in the second row in back. (Witness indicating George Ford, one of the defendants.) I also met the captain of the "Malahat," whose name is Murray.

I first met C. H., the date I don't remember, at the place of business of Quartararo, the Bohemian Cocktail Supply Company on Minna Street in this city and county. Vincent Quartararo gave me my instructions about going out to get the cargo. My brother, Marino Crivello, was during this time operating the motor-boat "Marconi," and about the middle of August, 1924, I saw him a couple of times out near the "Quadra" and the "Malahat."

(Testimony of Sam Crivello.)

It was about the middle of August, 1924, I saw him pulling away from the "Malahat" as I was going to her. The second time I saw him I found him tied behind the "Malahat" getting a load. I do not know whether he got a load or not.

Cross-examination.

I took loads of liquor from the "Quadra" and delivered them [188] to Vincent Quartararo in Oakland Creek. Quartararo was personally present. I don't remember the date that I was first taken into custody, but I should say it was about a month and a half ago, or two months, or something like that. At the time that I was arrested I retained a lawyer, but I don't know whether my lawyer talked with Government officials in regard to my case. My lawyer advised me to plead guilty in this case. I don't know whether that was after he had seen the district attorney or not. My lawyer told me that it would be better for me to plead guilty. I believe my lawyer had gone to the district attorney's office and talked the case over with him at that time.

I am taking my own chances with regard to punishment. I am telling the truth and I am not telling any lies. I think it better for me to take the witness-stand and tell the truth than to stand trial, and have been so advised by my attorney, and I believe that I am going to be dealt with leniently after having testified for the prosecution.

I was operating the motor-boat "California," when my brother's boat the "Marconi," which was

(Testimony of Sam Crivello.)

operated by him, was seized by the Government, and I have an interest in that boat. It is true that I had a conversation with Vincent Quartararo in which I asked him to put up bonds in order to release my boat from the Government, and it was after that time that I came to the conclusion that I should plead guilty. Vincent Quartararo refused to release my boat saying, "I have nothing to do with that." Quartararo gave me the order to go to the "Quadra" and bring the stuff in. I do not know whether Quartararo was an agent for the "Quadra" or not. I went out to the "Malahat" and was sent from the "Malahat" by the captain of the "Malahat" to the "Quadra" on the occasion when I went out from Vincent Quartararo.

All of the deliveries of the contraband liquor taken from the [189] different vessels by me were made at Oakland Creek, and on each occasion the defendant Vincent Quartararo was present. The first trip from the "Norburn" was about the beginning of May, that is as close as I can remember. It was about the last of April or the first of May; that is, it would be within the first five days preceding the end of April and the first five days of the month of May. I have no other way of fixing the date, except to the best of my recollection. My wages were paid by Quartararo. The first time that I delivered the liquor to Quartararo was about nine or half past nine at night, and it was some place close by East Oakland. I always delivered at a wharf there. I took the liquor the sec-

(Testimony of Sam Crivello.)

ond time from the "Norburn" in the motor-boat "Skidaddle," and that was about the same time as the first trip. The next time I delivered to Vincent Quartararo was about a week or ten days afterwards. I don't remember the exact date, and that delivery occurred from the "Norburn." I at that time was operating the motor-boat "Skidaddle." The "Skidaddle" was furnished to me from Oakland by Vincent Quartararo. The next delivery after that was about the middle of May, or the last of May, I don't remember the date now, and Vincent Quartararo was there at that time. The next time was in August, the early part of August, 1924, and at that time I used the motor-boat "California" and the delivery was made at the same place. The first delivery from the "California" was made the first day of August. I can remember that date, but don't remember the day of the month in April or May. The next delivery after the delivery on the first of August was about three or four days after, and made to the same place. The only person with me was my engineer Worrick. There were some other people present when I made the delivery to Quartararo, but I could not recognize who it was. It was night. They carted the liquor away in trucks. I did not help them load it, I just took it from below and put it on deck. I could not recognize who the parties [190] were other than Quartararo; I had never seen them before. I could not recognize them if I saw them. Vincent Quartararo was present at

(Testimony of Sam Crivello.)

every trip. I delivered at Oakland Creek three times from the "Norburn" and eight times from the "Malahat," and on one occasion I got the cargo partially from the "Malahat" and partially from the "Quadra," and I delivered them all to the same place in Oakland except at one time, the last trip, when the delivery was made at Pacific City in San Mateo. At that time I delivered it to the wharf there to Mr. Quartararo. The time I made the delivery at Pacific City, Quartararo was present and the liquor was unloaded by him to the wharf, and they took it from there. In the dark I could not see who they were. There were no lights there and I had no lantern or flashlight, and they did not come on board. Quartararo was standing right by the end of the pier. He came up and shook hands and talked with me. It was about ten o'clock at night when I went to Pacific City and I had been told to go there by Vincent Quartararo. That was about the beginning of September. I don't remember whether it was the first, second or fourth. I have no means of fixing the particular day when that occurred, but that was the last occasion, or the last trip that I made. I think in all I made about twelve or thirteen trips between April or May, or the last part of April and the first part of May, and sometime in the beginning of September. The next to the last trip was made around the 25th or 24th of August, or something like that, or maybe it was three or four days before the 24th of August. I cannot remember the exact date. I be-

(Testimony of Sam Crivello.)

lieve that the third one from the last trip was about four or five days apart, about the 21st of August. The trips were about four or five days apart.

Mr. COGHLAN.—Have I covered all the deliveries that you made in my questions to you?

A. About that, 10 or 12, or 13, whatever it was.

Q. I have only asked you about seven. You would remember the [191] other dates if I did ask you? A. No.

Q. In other words, you want to convey to us the information that somewhere between April 1, or thereabouts, and September, at the beginning of September, you made something in the neighborhood of from 10 to a few more deliveries; is that correct?

A. About 10 or 11; I don't remember myself.

The first delivery that I made was in the "Skidaddle" and was made about nine or nine-thirty at night at Oakland Creek. I do not remember of any other person during all these trips who helped [192] in unloading the boat or taking the stuff away, outside of my engineer, whom I cannot find. (Questions by Mr. GREEN.)

My last trip was about the first part of September, and that was partially from the "Malahat" and partially from the "Quadra." I don't remember the exact days, whether it was the 3d, 5th or 6th, but it was somewhere around that neighborhood. I will say it was about the first week in September. That is the last trip I made out there. I took the bags out to the "Quadra" before the

(Testimony of Sam Crivello.)

last trip, that would be sometime in August, 1924. I am very positive of that. I fixed the last trip very clearly because of it being made at Pacific City, and the trip that I took the bags out on was the trip before that. The wharf at Pacific City where I took the liquor to runs easterly from the amusement park. Basing my recollection upon the trip to Pacific City, I place the time that I made the trip to the "Quadra" with the bags around the neighborhood of the 22d or 24th of August, and I took them to the "Quadra" but could not put them on board because of the guard rail of the "Quadra" and therefore took them to the "Malahat."

(Questions by Mr. RIORDAN.)

I believe the "Malahat" had left out there when I took the last load in, but on the load before the last one the "Malahat" was there, and the next time I went out the "Malahat" had left. The dates that I have been fixing are about as close as I can get.

Mr. RIORDAN.—And when these attorneys are telling you, fixing your dates as the 1st of September, might it be the 1st of October—

Mr. GREEN.—Just a moment.

Mr. RIORDAN.—Just allow me to finish the question.

Mr. COGHLAN.—The question is not fair. [193]

Mr. RIORDAN.—When it comes to fairness, we are at least entitled to finish a question, and then

(Testimony of Sam Crivello.)

you can make all the objections you want. Read the question.

(Last question repeated by the reporter.)

Mr. RIORDAN.—I mean when you referred to the last trip.

Mr. GREEN.—Just a moment. I object to the question as not being proper redirect examination, and an attempt to bolster up the witness, and change his absolute testimony.

Mr. RIORDAN.—Oh, no.

Mr. GREEN.—Leading and suggestive.

Mr. RIORDAN.—I think it is fairly clear, but I am making it a little more clear.

The COURT.—He may answer.

Mr. GREEN.—Exception.

(Rep. Tr., pp. 253, 254.)

A. Well, about the dates I don't hardly remember. I don't think I could be that far off, from September to October. That is my judgment, but I have no records to go by.

(Rep. Tr., pp. 219–254.)

TESTIMONY OF C. E. BALIN, FOR THE UNITED STATES.

C. E. BALIN, a witness called on behalf of the United States, being first duly sworn, testified as follows:

My name is C. E. Balin and I am manager of the Grand Union Hotel, and was such on October 13, 1924, and I was present when the members of the crew of the "Quadra" registered at the hotel,

(Testimony of C. E. Balin.)

and I registered them. The paper you have shown me is the hotel register sheet of the date of October 13. I do not know whether I saw the name that you showed me, McLennon, written, because half a dozen of them registered there and I stood behind the counter. I don't know, or rather, I did not see the name written.

(Rep. Tr., pp. 254, 255.) [194]

TESTIMONY OF J. MILLER, FOR THE UNITED STATES.

J. MILLER, a witness called on behalf of the United States, being first duly sworn, testified as follows:

My name is J. Miller and I am hotel clerk for the Grand Union Hotel, and was such on October 13, 1924. I did not see the gentleman referred to as "McLennon" write in the register. I was not on duty at that time. I saw the sheet of paper later, but at the time it was written I was at supper.

(Thereupon the hotel register was introduced for identification and marked U. S. Exhibit No. 28 for Identification.)

(Rep. Tr., pp. 255–257 incl.)

TESTIMONY OF D. R. JACKS, FOR THE UNITED STATES.

D. R. JACKS, a witness called on behalf of the United States, being first duly sworn, testified as follows:

My name is D. R. Jacks and I am a clerk in the

(Testimony of D. R. Jacks.)

marine department of the custom-house. I recognize the cards shown me. They are records from the custom-house and I am the custodian of them, and they were delivered to the custom-house on May 23, 1923, and delivered to me by Mr. O. Weissich of the Western California Fish Company.

(Thereupon said exhibits were received in evidence and marked U. S. Exhibit No. 29.)

(Rep. Tr., pp. 257, 258.)

TESTIMONY OF O. WEISSICH, FOR THE UNITED STATES.

O. WEISSICH, a witness called on behalf of the United States, being first duly sworn, testified as follows: [195]

My name is O. Weissich and I am in the wholesale fish business with the Western California Fish Company. I saw Government's Exhibit No. 29, consisting of two cards signed, and they were signed by Emilio Pensotti.

(Rep. Tr., p. 259.)

TESTIMONY OF H. D. CROSS, FOR THE UNITED STATES.

H. D. CROSS, a witness called on behalf of the United States, being first duly sworn, testified as follows:

My name is H. D. Cross and I am the manager of the safe deposit department for the Bank of Italy at its head office, and was such on November

(Testimony of H. D. Cross.)

8th, 1924. I could not say whether I saw the defendant Quartararo on the morning of November 8th, 1924, or not. I would have to look up the record to find out, and I have not done that, but I can do so between now and to-morrow morning.

(Rep. Tr., pp. 259, 260.)

TESTIMONY OF R. J. HOSKINS, FOR THE UNITED STATES.

R. J. HOSKINS, a witness called on behalf of the United States, being first duly sworn, testified as follows:

My name is R. J. Hoskins, and on October 8th, 1924, I was a teller in the Bank of Italy at its head office, Powell and Market Streets.

Q. Did you see Mr. Quartararo on that day?

Mr. COGHLAN.—We object to that on the same grounds heretofore interposed by both counsel.

The COURT.—Objection overruled.

Mr. COGHLAN.—We reserve an exception.

(Rep. Tr., p. 260.) [196]

A. Yes, sir.

The first time I saw him I should judge was around 11:00 o'clock. I did not have any conversation with him, nor did he deliver anything to me.

Q. Did you see him talking to anybody else?

Mr. COGHLAN.—The same objection, not material, relevant or competent.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

(Testimony of R. J. Hoskins.)

A. He was talking to Mr. Pearson, a teller in the cage with me.

Mr. GILLIS.—Q. Could you hear what was said?

Mr. FAULKNER.—The same objection.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

A. No, sir.

Mr. GILLIS.—Q. Did you see him leave anything with Mr. Pearson at that time?

Mr. FAULKNER.—The same objection.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

A. No, sir.

Mr. GILLIS.—Q. Did you see him leave anything later with either yourself or with Mr. Pearson?

Mr. COGHLAN.—We interpose the same objection, your Honor.

The COURT.—Objection overruled.

Mr. COGHLAN.—Exception.

A. No, sir.

(Rep. Tr., pp. 261, 262.)

These bills that have been shown me I first saw on Monday, sometime in the morning. They were brought into the bank to the [197] *to the* chief teller. I do not know who brought them there. The bills were in half at that time. I just happened to see them. I didn't do anything with them. The first time I had them was when I took them down to the Federal Reserve Bank. I didn't

(Testimony of R. J. Hoskins.)

arrange to piece them together, Mr. Pearson did that. I turned them into the Federal Reserve Bank for some bills that were not marked and received for them $83.00.

(Thereupon said bills were marked for identification U. S. Exhibits 30 to 36, inclusive.)

I do not know who the man was that brought them in, but I never saw him in the bank and I have never seen him since.

(Rep. Tr., p. 264.)

TESTIMONY OF A. F. PEARSON, FOR THE UNITED STATES.

A. F. PEARSON, a witness called on behalf of the United States, being first duly sworn, testified as follows:

Mr. GILLIS.—Q. Mr. Pearson, these Exhibits 30 to 36 inclusive, did you see these on the date that Mr. Hoskins testified to, on Monday, the 10th of November, 1924?

Mr. FAULKNER.—The same objections, your Honor, concerning that, subsequent to the consummation of the conspiracy.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

A. Yes.

(Rep. Tr., p. 264.)

I don't know who brought them in. I saw Quartararo in the bank on Monday.

Q. Did you have a conversation with him with reference to these bills? [198]

(Testimony of A. F. Pearson.)

Mr. COGHLAN.—If the Court please, we offer the same objection.

The COURT.—The objection is overruled.

Mr. COGHLAN.—Exception.

A. Not that I recall.

(Rep. Tr., p. 265.)

I do not think I had any conversation with Quartararo with respect to these bills. I do not know who brought them in, and they were not deposited to any account in our bank. Some man brought them in and wanted to know if they were good. He just left them until he could find out if they were.

Mr. GILLIS.—Q. Did you see Mr. Quartararo a day or two or three days prior to that time?

Mr. COGHLAN.—We object to that. It might not be harmful, but it is not relevant, competent or material. I think counsel has exhausted this kind of inquiry.

The COURT.—Objection overruled.

Mr. COGHLAN.—Exception.

A. I think I did, yes.

Mr. GILLIS.—Q. Did you have a conversation with him? A. I think so.

Q. What was that conversation that you had with him?

Mr. COGHLAN.—We object to that as hearsay, and as hearsay as to the other defendants, and something that occurred subsequent to the time of the conspiracy set forth in the indictment; that is, occurring subsequent to the time of the alleged

(Testimony of A. F. Pearson.)

conspiracy, and as having no proper foundation, as indicating nothing at all with reference to the conspiracy that is charged here in the indictment; in other words, it is not led up to by any foundation whereby we can even intelligently object to it, except that there is no foundation [199] here.

The COURT.—Objection overruled.

Mr. COGHLAN.—Exception.

A. I could not say. I waited on Mr. Quartararo a number of times prior to that.

Mr. GILLIS.—Q. Did you have any conversation with Mr. Quartararo with reference to the redemption of some one dollar bills?

Mr. COGHLAN.—We object to that as leading and suggestive of an answer, and with a great deal of regret assign that as misconduct on the part of the district attorney.

The COURT.—Objection overruled.

Mr. COGHLAN.—Exception.

A. I did.

Mr. GILLIS.—Q. About when was that with reference to the time that you got those bills?

A. I would say it was within three days; it might have been the same day; it might have been a day or so before.

Q. What was that conversation?

Mr. COGHLAN.—We object to that on the same grounds.

The COURT.—Objection overruled.

Mr. COGHLAN.—Exception.

A. Mr. Quartararo asked me if torn bills could

(Testimony of A. F. Pearson.)

be redeemed, or words to that effect. I think I asked Mr. Quartararo what kind of bills he had reference to, and asked him if he had the bills with him and he said, "no." I told him if he would bring them in I would tell him, and that was all that was said, and a day or two or three afterwards these bills were brought in and I had a conversation with the man who brought them in. I don't recall just what it was. He said he had some torn bills. I told him I didn't have time to look at them; that was right during the rush hour at noon. I asked him [200] if he would leave them on receipt and I would look at them and if possible would collect on them for him. He said he would do that. I asked him if he could come back later the same day and he said he would if he could, but otherwise he would be in during the early part of the next week.

Mr. FAULKNER.—Your Honor, might I interrupt to object to this conversation as immaterial, irrelevant and incompetent as to any party not connected with this proceeding, and I move to strike out the answer of the witness.

The COURT.—The objection is overruled and motion denied.

Mr. FAULKNER.—Exception.

(Rep. Tr., pp. 265–268.)

I did not give him a receipt; he left the bills without any receipt. I did not know that this was in any way connected, nor did I have any way of finding out that it was in any way connected with Quartararo. Later that afternoon I got the bills

(Testimony of A. F. Pearson.)

out and looked at them and pasted some of them together and had another man do the rest. On Monday I referred them to an officer of the bank and when he saw the number there was of them he told me not to handle them and to let the man take them down himself and have them redeemed. I then took them back and locked them up the till. I did not see the person who gave them to me after that, but I held the bills and when I came back from lunch on Monday Mr. Hoskins told me that the man had been in while I was out to lunch but that the bills were locked up in my cabinet and that he could not get them. He told the man to come back later, and the man said he would. Mr. Hoskins then asked me for the bills, and I gave them to him. Then later on I took them and locked them up again, and several days later I gave them back to Mr. Hoskins and that is the last time I saw them. I did not go down to the Federal Reserve Bank with them, nor did I see the man that brought them in after that. [201]

(Questions by Mr. COGHLAN.)

I do not know who brought these bills into the Bank of Italy, nor did I ever have any conversation with the defendant Quartararo with respect thereto. I gave the bills to Mr. Haskins, my assistant.

(Rep. Tr., pp. 264–271 incl.)

TESTIMONY OF MILTON M. DAVIS, FOR THE UNITED STATES.

MILTON M. DAVIS, a witness called on behalf of the United States, being first duly sworn, testified as follows:

My name is Milton H. Davis and I am a deputy county clerk of the city and county of San Francisco, and I have brought with me the original Articles of Incorporation of the Bohemian Cocktail Supply Company, filed in the office of the county clerk of the city and county of San Francisco on May 15, 1917.

Mr. COGHLAN.—We move that the testimony of this witness be stricken out as not material, relevant or competent, having no bearing upon this case.

The COURT.—I cannot tell. What do you intend to offer them, Mr. Gillis?

Mr. GILLIS.—I do not care to offer them in evidence. I don't know that we can put the original articles in evidence, they are records of the city and county of San Francisco. I simply want to have them identified, and later will ask the witness following this witness as to the affidavits taken on the articles of incorporation.

The COURT.—Motion is denied.

Mr. COGHLAN.—Exception.

(Rep. Tr., pp. 271, 272.)

The number in our office of these articles is Filing No. 15,006. [202]

TESTIMONY OF E. J. CASEY, FOR THE UNITED STATES.

E. J. CASEY, a witness called on behalf of the United States, being first duly sworn, testified as follows:

My name is E. J. Casey and I am a notary public for the city and county of San Francisco, and was such on the 15th day of May, 1917. The certificate attached to the articles of incorporation numbered 15,006 is my certificate and is an acknowledgment of the individuals who signed the articles of incorporation.

(Whereupon a photostatic copy of the articles of incorporation of the Bohemian Cocktail Supply Company, as filed in the office of the county clerk of the city and county of San Francisco, numbered 15,006, was offered, and it was stipulated between counsel that the photostatic copy may substitute the original for the purposes of the offer, counsel for the defendants, however, reserving its objections to the introduction of the original or its copy in evidence.)

Mr. GILLIS.—I now offer the photostatic copy of that part of the articles of incorporation, No. 15,006, which has just been testified to, showing the signature of Vincent Quartararo.

Mr. COGHLAN.—We object to it on the ground that no proper foundation has been laid for it, and that it is not material, relevant or competent.

The COURT.—The objection is overruled.

(Testimony of L. E. Shields.)

Mr. COGHLAN.—Exception.

(Whereupon said Exhibit was introduced in evidence and marked U. S. Exhibit No. 37.)

(Rep. Tr., pp. 272–274 incl.) [203]

TESTIMONY OF L. E. SHIELDS, FOR THE UNITED STATES.

L. E. SHIELDS, a witness called for the United States, first being duly sworn, testified as follows:

My name is L. E. Shields, and I am chief of the commercial bookkeeping department of the Bank of Italy at its head office, Market and O'Farrell Streets. I have with me the signature card of Vincent Quartararo, which is used for his personal account. I know this is the signature of Vincent Quartararo, but I don't know who Vincent Quartararo is.

Mr. COGHLAN.—We move that the answer be stricken out as not responsive to the question. We also desire to object to the question on the ground that there is no proper foundation laid for it, and it is not material, relevant or competent.

The COURT.—Motion denied and objection overruled.

Mr. GILLIS.—In place of offering the original card I desire to offer a photostatic copy of the card.

Mr. COGHLAN.—As to that we have no objection.

Mr. FAULKNER.—Save the objection, of course, it is not binding upon any of the other defendants in the case.

(Testimony of L. E. Shields.)

The COURT.—It is only for the purpose of furnishing an examplar of the handwriting?

Mr. GILLIS.—That is the only purpose for which it is offered. I offer it in evidence.

Mr. COGHLAN.—We object to it on the ground that there is no proper foundation, no connection between the defendant and any other thing in the record, and it is not relevant, material or competent.

The COURT.—Overruled.

Mr. COGHLAN.—Exception.

Mr. FAULKNER.—Did your Honor pass upon my objection? [204]

The COURT.—I overruled the objection.

Mr. FAULKNER.—Exception.

(Whereupon said card was introduced in evidence and marked U. S. Exhibit No. 38.)

(Rep. Tr., pp. 274, 275.)

Mr. GILLIS.—Q. Have you checks No. 301 and 303 to the account of Vincent Quartararo?

A. Yes.

Q. Those two checks are what, Mr. Shields?

Mr. COGHLAN.—We object to that on the same grounds, that no foundation has been laid, it is not material, relevant or competent to anything here.

The COURT.—Overruled.

Mr. COGHLAN.—Exception.

(Rep. Tr., p. 275.)

These are checks of Vincent Quartararo paid through the Bank of Italy by us on November 3*th* and November 28th, 1924.

(Testimony of L. E. Shields.)

Mr. GILLIS.—In place of the two original checks I offer in evidence, may it please the Court, photostatic copy of check No. 301, and ask that it be introduced in evidence, the offer being made solely for the purpose of furnishing an exemplar of Mr. Quartararo's handwriting.

Mr. COGHLAN.—We object to that on the ground that no proper foundation has been laid, it is not material, relevant or competent.

The COURT.—Overruled.

Mr. COGHLAN.—Exception.

(Whereupon said check was marked U. S. Exhibit 39 and admitted in evidence.)

(Rep. Tr., p. 276.)

Mr. GILLIS.—I offer in evidence check No. 303 of Vincent [205] Quartararo on the Bank of Italy, a photostatic copy of the original, and ask that it be introduced in evidence, it being introduced for the sole purpose of furnishing an exemplar of Mr. Quartararo's handwriting.

Mr. COGHLAN.—The same objection.

The COURT.—The same ruling.

Mr. COGHLAN.—Exception.

(Whereupon said check was marked U. S. Exhibit 40 and introduced in evidence.)

(Rep. Tr., p. 276.)

I have with me the statement sheet for these particular checks, which were delivered on November 5, 1924. They are the statements of July 31, August 30, October 31, and November 20, and contain the

(Testimony of W. E. Monahan.)

signature card for said statements, which is a receipt card.

Mr. COGHLAN.—We make the same objection and take an exception.

Mr. GILLIS.—I offer in evidence, may it please the Court, a photostat copy of the receipt card of Vincent Quartararo to the Bank of Italy, the sole purpose being to furnish an exemplar of the handwriting of Vincent Quartararo.

Mr. COGHLAN.—The same objection and exception.

(Whereupon the said card was introduced in evidence and marked U. S. Exhibit 41.)

(Rep. Tr., pp. 274–276½ incl.)

TESTIMONY OF W. E. MONAHAN, FOR THE UNITED STATES.

W. E. MONAHAN, a witness called for the United States, first being duly sworn, testified as follows:

My name is W. E. Monahan, and I have with me the affidavit of registration of Vincent Quartararo. This is the original [206] affidavit of Vincent Quartararo, who lives at 1246 Eleventh Ave., San Francisco.

(Rep. Tr., p. 277.)

TESTIMONY OF F. C. WILHEIM, FOR THE UNITED STATES.

F. C. WILHEIM, a witness called for the United States, being first duly sworn, testified as follows:

My name is F. C. Wilheim, and on the 25th day of September, 1924, I was a deputy registrar of voters. The signature on the affidavit of registration of Vincent Quartararo, who lives at 1246 Eleventh Ave., being numbered 217,601, it being the original affidavit of registration that the deputy registered has just testified about, is in my handwriting.

Mr. COGHLAN.—The same objection to that, your Honor.

The COURT.—Objection overruled.

Mr. COGHLAN.—Exception.

I took that affidavit of registration.

Mr. GILLIS.—I now ask that the photostat copy of this affidavit of registration be received in evidence, the sole purpose being for the purpose of furnishing an exemplar of the handwriting of Vincent Quartararo.

Mr. COGHLAN.—We offer the same objection, your Honor.

The COURT.—Objection overruled.

Mr. COGHLAN.—Exception.

(Whereupon said affidavit was marked U. S. Exhibit 42 and admitted in evidence.)

(Rep. Tr., pp. 277, 278.) [207]

TESTIMONY OF MARINO CRIVELLO, FOR THE UNITED STATES.

MARINO CRIVELLO, a witness called on behalf of the United States, first being duly sworn, testified as follows:

My name is Marino Crivello, and I live at 779 Chestnut Street, San Francisco, California, and have lived there for about four years. I know Vincent Quartararo and have known him since 1915. I own the gasoline launch "Marconi," and in the year 1924 Mr. Quartararo employed me to do work with that boat, and I think that it was around the 19th, 20th or 21st of September, 1924. One day he rang me up at my house—

Mr. COGHLAN.—Just a minute. We object to this, if the Court please, as not material, relevant or competent, and on the ground that no proper foundation has been laid.

The COURT.—Objection overruled.

Mr. COGHLAN.—Exception.

(Rep. Tr., p. 279.)

He rang me up at my house and he said he wanted to see me at the cocktail place on Minna Street, and I went there but I did not see Vince; I saw C. H. He said his name was C. H. And when I got down to the cocktail place I did not see Vince but I saw his father.

Mr. FAULKNER.—If the Court please, we object to that as immaterial, irrelevant and incompetent, hearsay and not binding upon any person be-

(Testimony of Marino Crivello.)

fore the Court on the issues involved in this indictment.

The COURT.—Q. Was C. H. there at the time?

A. Yes, sir.

Q. And did he hear what Vincent's father said?

A. He said, "That is the man that my son rang up."

Q. He said that to C. H.? A. Yes.

The COURT.—I will overrule the objection.

Mr. FAULKNER.—Exception. [208]

I see C. H. in the courtroom now.

(Whereupon, at the direction of Mr. Riordan Mr. Bellanger stood up and was identified by the witness as C. H.)

C. H. told me he wanted me to work on the outside. At first he asked me if I had a job and I said, "Yes" and he then asked me if I wanted to go to work outside. I asked him what kind of work he had and he said, "Well, if you want to go to work I'll let you know," and I told him I would go to work and asked him what kind of work he had and he said he had some stuff to be transferred from the "Malahat" to the "Quadra." I told him that I would do it, and he asked me how much I wanted, and I told him I had never done that kind of work before and he told me that if I went to work he would treat me good, and I did consent to do the work, and subsequently I did go outside in my motor-boat "Marconi."

C. H. gave me two letters, one for the transfer of the cargo, and one to bring a load ashore.

(Testimony of Marino Crivello.)

Q. Did he say on the one paper what it was a transfer for?

Mr. COGHLAN.—We object to that as not material, relevant or competent, and on the ground no proper foundation has been laid, and it is hearsay and not the best evidence.

The COURT.—I am not sure whether you are asking him what was in the letter or what Mr. Bellanger said about it.

Mr. RIORDAN.—It is the letter. I want to clear up what he said about the transfer. I will reframe the question.

The COURT.—Your question is doubtful about that.

Mr. RIORDAN.—Q. Did C. H. tell you what the first letter was?

A. Yes, one for the transfer and one for the load.

Q. What do you mean by the transfer—do you mean from the "Malahat" to the "Quadra"?

A. Yes.

Mr. FAULKNER.—Your Honor, we object to the witness determining what another person meant by certain words; the document speaks [209] for itself.

Mr. RIORDAN.—I am asking him for his explanation of it, to clear up his explanation of it; he has given it in his own verbiage.

The COURT.—He previously testified that he was told that he was to be employed to transfer from the "Malahat" to the "Quadra."

(Rep. Tr., 279–281.)

(Testimony of Marino Crivello.)

C. H. said one order was to transfer from the "Malahat" to the "Quadra" and one to bring a load ashore. He told me to bring the load to Drakes Bay, and he told me to go to the "Malahat" and get the load. I arrived at the "Malahat" in the morning, about 9:00 or 10:00 o'clock and I gave the order to the captain. At that time my brother Peter Crivello was with me. Thereupon the captain of the "Malahat" gave me 40 barrels of whiskey and I put them into my boat. I thereupon went to the "Quadra" and saw the captain of the "Quadra" and my brother gave him the letter. I then loaded the 40 barrels of whiskey on the "Quadra" and went back to the "Malahat" and took 35 barrels more of whiskey and loaded them on the "Quadra." I thereupon took a load of sacks of whiskey from the "Quadra" to Drakes Bay, leaving the "Quadra" about 4:00 or 5:00 o'clock in the night, and arriving in Drakes Bay about 12:00 or 1:00 o'clock that night.

Q. How did you know who to give it to at Drakes Bay?

Mr. FAULKNER.—That is objected to as immaterial, irrelevant and incompetent, and there is nothing in the record that he gave it to any person whomsoever.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

(Rep. Tr., p. 284.)

A. C. H. says, "When you go to Drakes Bay ask for Joe." [210]

(Testimony of Marino Crivello.)

I went to Drakes Bay and called for Joe but I didn't know who Joe was. I thereupon unloaded the whiskey and then went back to the "Malahat." I got $500.00 for landing the whiskey at Drakes Bay from Joe. After that I went back to the "Malahat" the same night and tied up outside her and stayed there all day and all that night because they had no more room to put stuff on the "Quadra." The next day I think I transferred about two or three loads of Chinese wine from the "Malahat" to the "Quadra." I think I stayed out there about two or three days and when I left I went to San Francisco and saw C. H. and he asked me if I had finished the work and I told him I had not finished yet. About two or three days later I went to the "Malahat" again and transferred the Chinese wine. C. H. gave me another document of that kind. On this trip I transferred empty barrels from the "Quadra" to the "Malahat." They were empty oil barrels, and I also transferred from the "Malahat" to the "Quadra" about 15,000 sacks and some provisions. The sacks were empty sacks. I then landed from the "Quadra" at Drakes Bay liquor in about the same manner as I did the first time, and when I finished that trip I came ashore. C. H. never paid me for transferring that from the "Malahat" to the Quadra." I saw him about it at the cocktail place and he asked me how much I wanted and I said I wanted $1,700.00, but he said that was too much and thereupon said he would talk to

(Testimony of Marino Crivello.)

Vince and fix it up with Vince. Vince gave me $500.00 on the 28th day of January, 1925.

Mr. FAULKNER.—Now we object to that, if the Court please, as immaterial, irrelevant and incompetent, and a fact occurring subsequent to the indictment in this case, and not binding on any other defendant in this proceeding.

Mr. COGHLAN.—And we move that it be stricken out, may it please the Court, upon the same grounds. [211]

The COURT.—That is not a statement, that is a specific act.

Mr. FAULKNER.—It is an act or transaction occurring with one of the alleged conspirators subsequent to the consummation of the conspiracy alleged in the indictment.

The COURT.—Yes, I know, but the rule of one binding the others must be covered by the instructions because in any event it would be binding upon Mr. Quartararo. The objection will have to be overruled.

Mr. RIORDAN.—And as to them, your Honor, I take it the conspiracy has not terminated, that the fruits of the transaction had not terminated.

The COURT.—That of course does not appear yet. I will cover it by instructions so that the other defendants will be protected.

Mr. COGHLAN.—And your Honor will allow the additional objection that there is not any foundation?

The COURT.—Objection overruled.

(Testimony of Marino Crivello.)

Mr. COGHLAN.—Exception.

Mr. RIORDAN.—He has answered that question.

Q. Did you also have a talk then with Vince about this payment?

Mr. FAULKNER.—The same objection.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

A. Sure.

Mr. RIORDAN.—Q. What did Vince have to say about it?

Mr. COGHLAN.—We offer the same objections that heretofore have been interposed; it is not material, relevant or competent, no proper foundation, and it concerns a time subsequent to the transactions referred to in the indictment.

The COURT.—Objection overruled. [212]

Mr. COGHLAN.—Exception.

A. I would go and see Vincent Quartararo every week, every two weeks, every month.

Mr. COGHLAN.—I move that that be stricken out as not responsive to the question.

The COURT.—Motion denied.

Mr. COGHLAN.—Exception.

A. (Continuing.) —And he kept telling me all the time, when the case was over with he would give me the money.

Mr. COGHLAN.—We move that that be stricken out on the ground that it is not responsive, and is not certain as to dates, and it is not material, relevant or competent, and it has no proper foundation in the evidence.

(Testimony of Marino Crivello.)

The COURT.—Motion denied.

Mr. COGHLAN.—Exception.

Mr. RIORDAN.—Q. Marino, you have pleaded guilty, like your brother, have you? I say you have pleaded guilty to this? A. Sure.

Q. And this story that you have told, has any Government officer threatened you in any manner to get you to tell it? A. No, sir.

Mr. RIORDAN.—That is all.

(Rep. Tr., pp. 287–288½.)

(Questions by Mr. COGHLAN.)

The boat that I own and operated during these various times was the "Marconi." It has been seized by the Government. I went to Vincent Quartararo, not to get my boat released from the Government, but for money that he owed me for my work. It is not a fact that I went to Quartararo and asked him to put up money or a bond or to secure for me the release in some way from the Government of [213] my boat the "Marconi" and that he refused to do it saying that there was no reason why he should do so. I did not ask him to do this, nor did I threaten him if he failed to so do, nor did I say that it would go hard with him. I have known Quartararo since 1915, and knew him when he was a member of the State Market Commission, when I would see him quite often at Fishermen's Wharf. I never had any trouble with Quartararo.

I was born in Porticello, Italy, and I am a Sicilian. My brother is also a Sicilian. Before

(Testimony of Marino Crivello.)

I pleaded guilty in this case I went to the custom-house and there saw Mr. Creighton and talked with him, and at that time my brother, Peter Crivello, acted as interpreter for me. I did not have any understanding with him down there as to what the Government would do for me if I pleaded guilty. Two men from the custom-house came to see us and then I went to the custom-house after my arrest. My boat was seized before my arrest and has been held by the Government since then, and after that I went to see my lawyer. Before I was arrested I went to the custom-house to see Mr. Creighton, and at that time I made a statement to him and thereupon told him that I didn't know anything. At that time I did not tell Mr. Creighton the truth. When Mr. Creighton called me the first time after my boat was seized I did not tell him the truth. I could not sleep any more after having told a falsehood to Mr. Creighton and one night I dreamed that they had put me in jail because I had told a falsehood, and in my dream I dreamed that my seven children were all crying because I was in jail, and a short while after that I went to Mr. Creighton and I told him the truth. That was before I came in here in court and pleated not guilty. After that I came into this court and pleaded not guilty. I first talked to Mr. Creighton about this thing in the month of January, and that was after I was indicted. The first time I talked to Mr. Creighton [214] I told him the story; the next time

(Testimony of Marino Crivello.)

I told him the truth. The first conversation with Mr. Creighton was in 1924 when I told him the story. The second was in January, 1925, when I told him the truth. The second conversation I had with Mr. Creighton took place in the custom-house; that was after the dream that I had. I then, after I had talked to Mr. Creighton, went to see a lawyer. I am not sure but I think that was in the month of January.

The reason that I went to see Mr. Creighton is that I had dreamt about it and was afraid I would be put in jail. I do not believe that a person telling the truth would be sent to jail. I did not come here in the hopes that by testifying I would not go to jail, I came here to tell the truth. I don't know whether I will be treated leniently and mildly because I came here and testified. Nobody has made me any promise that I would be dealt with leniently because I testified. I don't know what they are going to do with me, but I am here to tell the truth, and what they do to me they will do to me. I went to the custom-house alone and then afterwards I went to the attorney. I have talked to my attorney, Mr. Morris. I went there for advice as to what to do. I was advised by him to plead guilty and testify for the Government in this case, and that probably the Government would deal more leniently with me.

Up to the 15th of September I was fishing for salmon, and on that day the fishing season closed. At that time I was working for all the markets,

(Testimony of Marino Crivello.)

fishing. So that until the 15th day of September I did not carry any load of liquor. I don't know but I think that it was around the 18th, 19th or 20th of September that I first went to the Bohemian Cocktail Supply Company. It was somewhere around that time that Vincent Quartararo telephoned me, but I have no way of fixing the date, nor do I remember the day of the week the 15 of September fell on. I don't know whether it was Monday or not; nor do I know whether it was the same week that I stopped fishing that I received this telephone message. [215] I think it was four or five days after the fishing season was closed, and to the best of my recollection it was around the 19th of September. I cleaned up my boat and fixed my nets before I received the telephone message. I just made an estimate of the time, I don't remember exactly.

Mr. COGHLAN.—Q. Was it upon the same day that you received this message that you went out to these ships that you have spoken about, the "Quadra" and the "Malahat."

A. Yes. I didn't have anybody with me on the boat besides my brother, Peter. I think it was about 14 or 16 days that I did this work between the "Quadra" and the "Malahat." I don't remember the last day that I was engaged in this business, but it was around the latter part of September or the last part of October. It was about the latter part of September or the first of October. The last date that I was down to the

(Testimony of Marino Crivello.)

custom-house was in January. I do not remember the date. It was about the latter part of September or the first of October that I finished the work on the "Quadra" and the "Malahat." I am not certain but I think I worked about 13 or 14 days, or thereabouts carrying this contraband to and fro. I did not keep any books on it, nor have I any receipts or papers that would indicate it.

It is no affair of yours whether I have been convicted of something or not. I will say that I have never been convicted of a felony under the United States laws; I have never been in trouble. I have never been brought into court and charged with smuggling Chinese into this country, nor was I ever convicted of it.

(Questions by Mr. GREEN.)

I am a brother of Sam Crivello who testified here yesterday. My brother last fall operated the motor-boat "California." When I was out there I saw my brother there in the "California." The "Quadra" was out there at the time I saw him in the "California," and that was after I first spoke to C. H. I never heard of a man named "Phil Brockman," nor did I ever talk to him in an apartment about [216] this business. The first time I saw C. H. in the Bohemian Cocktail place I was alone. I talked to C. H. in the English language.

(Re. Tr., pp. 278–305 incl.)

TESTIMONY OF JOHN A. REED, FOR THE UNITED STATES.

JOHN A. REED, a witness called on behalf of the United States, first being duly sworn, testified as follows:

My name is John A. Reed. I am a police officer of the city and county of San Francisco, assigned to the city prison detail, and was such on October 11, 1924. This record that I have here is the record of the arrests of the police department of the city and county of San Francisco, and I am the custodian of the same.

Whereupon it was stipulated by and between counsel for the Government and counsel for the respective defendants that the defendants Allen and Nielsen were the same persons who were arrested on October 11th on board the motor-boat "903–B." And it was further stipulated that the defendants McKenzie and Pensotti were the same persons taken from the motor-boat "C–55" on October 12th, 1924.

Mr. FAULKNER.—As to the 23 officers and members of the "Quadra" indicted, it is stipulated that they are in court with the exception of Mr. McLennon.

(Rep. Tr., pp. 305–307.)

TESTIMONY OF E. O. HEINRICH, FOR THE *UNITED STATES.*

E. O. HEINRICH, a witness called on behalf of the United States, first being duly sworn, testified as follows:

My name is E. O. Heinrich and I am an examiner of suspected and disputed documents, practicing on a basis of legal chemistry and microscopy. My office is at 24 California Street, San Francisco. My residence and laboratory is at 1001 Oxford Street, Berkeley. I am a graduate of the University of California, Department of Chemistry. [217] I was called into consultation in this case by the office of the United States district attorney. I have attended courts as a witness on the question of handwriting, in the federal courts of the Northern District of California, the Western District of Washington, the District of Nevada, the United States Army Courts of the Western Department, in the State Superior Courts in every State of the west except Wyoming and New Mexico. I have been practicing my profession for about thirteen years, and I am a member of the Summer Session Faculty of the University of California, and have since 1917 been giving lectures there on criminal investigation. My researches and experience cover all classes of disputed handwriting.

I have examined Government's Exhibit No. 6 and have determined in whose handwriting the entries in that book were made. I have also ex-

(Testimony of E. O. Heinrich.)

amined Government's Exhibit No. 17 and I have determined in whose handwriting that was written. I have examined Government's Exhibits No. 30 to 36 inclusive, and have determined in whose handwriting the markings or writing on the reverse side of the bills was written. In coming to the determination with respect to whose handwriting these various instruments were written, I have used Government's Exhibits 19, 39, 38, 41, 40, 42 and 37, as exemplars. After an examination of the exhibits heretofore shown me, I have arrived at an opinion and conclusion as to who wrote or made the writing on Government's Exhibit No. 6.

Mr. GILLIS.—Q. In your opinion, from an examination of these exhibits, who wrote the several pages upon which writing appears, the writing in that exhibits? In your opinion who wrote it?

Mr. GREEN.—If the Court please, it is apparent that the only way that handwriting can be proven by an expert is by comparison of the disputed document with an admitted or proved exemplar of [218] the person's handwriting, and as far as this book is concerned we have before this Court no admitted or proven exemplar of the person's handwriting.

The COURT.—Well, you are assuming, Mr. Green, I presume that that was written by the ship's husband, aren't you?

Mr. GREEN.—Written by somebody.

The COURT.—Suppose he testifies it was written by Mr. Quartararo?

Mr. GREEN.—I can't assume that.

The COURT.—The only signature of the ship's husband appears on what?

Mr. GILLIS.—On the shipping article—on the ship's articles.

Mr. GREEN.—And that is not proven.

The COURT.—The shipping articles are in every respect the articles as fixed by the *statue* of the Dominion of Canada and the regulations of shipping men in connection therewith; in other words, where a man's name purports to be signed to the articles as a member of the crew in any capacity, even supercargo or ship's husband, the authorities are unanimous that in the absence of evidence to the contrary he is presumed to have signed it. It has been held even to be a basis, in the absence of other proof, to sustain a charge of desertion. It has been universally so held by the courts of both England and Canada.

Mr. GREEN.—I would have no objection to the witness testifying that in his opinion the person who wrote the entries in that book is the person who wrote the name in here; but I don't see how he can go any further than that, your Honor.

The COURT.—He is not asking him to go any further than that.

Mr. GREEN.—He is asking him who. The question "Who" means [219] to name a person.

The COURT.—Perhaps you had better phrase the question differently. In effect what he is asking for, Mr. Green, is simply this: Who in his opinion wrote that log. That is all he is asking him.

Mr. GILLIS.—That is all I am asking him. It is a perfectly proper question, so far as the question is concerned.

Mr. FAULKNER.—May I supplement Mr. Green's objection in this: Your Honor indicated that this instrument was an instrument that was kept under the laws of the Dominion of Canada. The Court cannot take judicial knowledge of the laws of the Dominion of Canada. It is an instrument that is not subscribed to by any official, and the burden of proof is on Mr. Gillis.

The COURT.—Well, if you want Mr. Gillis to put in evidence the laws of the Dominion of Canada I presume he can do so.

Mr. FAULKNER.—Yes, we ask for that.

Mr. GILLIS.—I wish however to call the Court's attention to this, that when these articles were turned over to the Customs officials they were there turned over by Captain Ford who said they were the ship's articles, with the crew.

Mr. FAULKNER.—Yes, that is true.

The COURT.—The objection overruled.

Mr FAULKNER.—Exception.

Mr. GREEN.—Your Honor, might I object to the form of the question? I believe the only question that can be asked the handwriting expert in this connection is, "In your opinion was the

(Testimony of E. O. Heinrich.)

exhibit shown written by the same person who wrote the name upon that list?"

The COURT.—I will permit the question in its present form.

Mr. GREEN.—Exception. [220]

Mr. COUGHLAN.—We object to the question, your Honor, upon the ground that it is the rule that all that an expert can testify to is that the two exhibits that are given to him are, in his opinion, in the same handwriting.

Mr. GILLIS.—That would be impossible where there are a number of names on the one exhibit.

The COURT.—The rule is not so narrow as tha, Mr. Coghlan. Objection overruled.

Mr. COGHLAN.—Exception.

Mr. GREEN.—I also object to it on the ground that it was seized and is being used in violation of the rights of the defendants under the Fourth and Fifth Amendments to the Constitution; it is an attempt to make a man a witness against himself.

Mr. GILLIS.—Are you making that objection in behalf of Mr. McLennan.

Mr. GREEN.—No, it is on behalf of the other defendants.

The COURT.—I think the objection would be good as to any of them so far as that particular paper is concerned, but I will overrule the objection.

Mr. GREEN.—Exception.

(Rep. Tr., pp. 309–312.)

A. The same person wrote this log, with the ex-

(Testimony of E. O. Heinrich.)

ception of the writing identified on the pages as one, two, three, four and so on, in red ink, and with exception of the writing on page five, as signed the ship's articles, which are People's Exhibit 19, with the name "J. A. McLennan" followed by the words "Port Hastings, Vancouver, Coal Harbour." The writing in Government's Exhibit No. 6 to which I particularly refer is as follows: The three lines on the upper right-hand corner of page one, all of the writing appearing in pencil on page two, all of the writing appearing in [221] pencil on page three, all of the writing appearing in pencil on page 40, 41, 42, 43, 44 and 45.

Mr. GILLIS.—Q. Showing you Government's Exhibit 17, after an examination of the several exhibits heretofore shown you, have you formed an opinion as to who wrote the entries in that book?

Mr. GREEN.—The same objection, as heretofore made.

The COURT.—Objection overruled.

Mr. GREEN.—Exception.

A. Yes.

(Rep. Tr., pp. 312, 313.)

In my opinion, all of the writing in Government's Exhibit No. 17, which begins with the entry dated Monday, August 25, and lies between and concludes with the entry of Monday, the 13th, 33d day, was written by the same person who wrote the name on the ship's articles, Govern-

(Testimony of E. O. Heinrich.)

ment's Exhibit 19, on page 4, line 21, "J. H. Mason, London."

The COURT.—Is J. H. Mason a defendant?

Mr. GREEN.—Yes, your Honor.

Mr. GILLIS.—J. H. Mason is a defendant, yes, your Honor.

Q. Showing you Government's Exhibit 30, Mr. Heinrich, have you formed an opinion as to who did the printing in ink on the back of these several one-dollar bills?

Mr. COGHLAN.—We object to that. That is not a fair question. It is not material, relevant or competent. It has not proper foundation, as obviously appears from the face of the bills themselves.

The COURT.—I don't understand that, Mr. Coghlan.

Mr. COGHLAN.—Well, it obviously appears upon those bills that they could never have had anything to do with the "Quadra" and there is not anything in the record that indicates that they could have had anything to do with the "Malahat." Doesn't it? [222] You have read those—what I called endorsements there. There is not an item upon those bills that affects—I don't want to be accused of making a speech to the jury—that affects the question of what was taken on any of those alleged expeditions from any of the ships that have been named up to this time.

Mr. GILLIS.—That would be impossible to determine until the opinion of the witness is given.

The COURT.—Your point is that it refers to a different kind of merchandise?

Mr. COGHLAN.—It does indeed, and I think that is a proper initial objection. Wouldn't that be conclusive, your Honor, if it appeared to the Court that this had to do with another transaction?

The COURT.—It might and it might not.

Mr. COGHLAN.—We are trying these defendants for a conspiracy which is defined or which they have attempted to define in the indictment.

The COURT.—I have heretofore cited you to the case of People against Gray. I think you are even at large as to the fact.

Mr. COGHLAN.—I am not infallible.

The COURT.—I am not a particular expert on these things.

Mr. COGHLAN.—I can imagine that when your Honor was a practicing lawyer that bills of that size very seldom came to your attention.

The COURT.—I don't know about that. I will overrule the objection.

Mr. COGHLAN.—Exception.

Mr. FAULKNER.—We object particularly that it could not under any phase of the law as your Honor conceives it to be, be binding on the defendants other than as the impression that this [223] witness might indicate he has that they are in a certain handwriting.

The COURT.—That might well be so. You know the rule, however, Mr. Faulkner. That rule is that

a statement made during the conspiracy is binding upon all.

Mr. FAULKNER.—Concerning a conspiracy.

The COURT.—And if it is a statement made after a conspiracy, that it is binding upon the person making it.

Mr. FAULKNER.—Yes, your Honor, if it concerns the conspiracy.

The COURT.—Yes. If the statements appearing on the back of these bills do not concern the conspiracy which is charged here it is hard for me to imagine what could.

Mr. COGHLAN.—Your Honor has read what I call the endorsements?

The COURT.—I have.

Mr. FAULKNER.—Your Honor, how could any endorsement from those bills referring to the "Malahat" or any ship your Honor might have in mind be binding on the officers and members of the crew of the "Quadra"?

The COURT.—I don't know, Mr. Faulkner, but I do know that if it does not the jury will be properly instructed. But at any rate, from any point of view, it is admissible as the opinion of the witness, which the jury may accept or not, as they see fit, as binding upon the person the witness may answer made those entries, if that person happens to be a defendant here.

Mr. FAULKNER.—Your Honor will give appropriate instructions to protect the rights of the rest of the defendants?

(Testimony of E. O. Heinrich.)

The COURT.—I will when I get to it. It may be abundantly established, even to the satisfaction of you gentlemen, that it does concern the immediate conspiracy charged. It may not; if not, [224] I will properly instruct the jury.

Mr. COGHLAN.—Your Honor will permit us to reserve the right to move to strike, of course?

The COURT.—Of course. So now you may answer, Mr. Heinrich.

A. Yes.

Mr. GILLIS.—Q. What is that opinion?

Mr. COGHLAN.—There is another objection that just has been called to my attention. I don't know to what matter his attention has been called particularly, your Honor.

Mr. GILLIS.—It is in the record, Mr. Coghlan.

Mr. COGHLAN.—Well, all right. Then I offer the further objection that the question is not such a question as will elicit an intelligent answer.

Mr. GILLIS.—I will withdraw the question and put it again.

Q. Mr. Heinrich, in your opinion, who wrote or printed the items on the back of the one dollar bills which go to make up Government's Exhibit 30?

Mr. COGHLAN.—We offer the same objections again, the proper foundation has not been laid, it is not material, relevant or competent and it calls for the opinion of the witness upon a matter that he cannot—well, the bills are not in evidence, so far as that is concerned. There has been absolutely no foundation. There is nothing here to indicate—and

(Testimony of E. O. Heinrich.)

that is one of the fundamental objections—that these bills were ever used in connection with any of these transactions with which your Honor has become familiar through the lips of the witnesses who have been brought to the witness-stand here—absolutely nothing but a statement by the district attorney. [225]

The COURT.—Objection overruled.

Mr. COGHLAN.—Exception.

Mr. FAULKNER.—We make the same objection that your Honor sustained a moment ago, that he cannot testify who wrote them, he can only testify that the handwriting that he has now and is examining is similar to certain other handwriting.

The COURT.—No, he can do more than that. He can give his opinion with regard to the person who wrote it, if there are exemplars before the Court of the handwriting of that person. You may answer the question.

Mr. FAULKNER.—Exception.

A. They were written by the same person, written and printed by the same person who has written the substance and signature of the exemplars, Government's Exhibits 39 and 40, and who has written the name "V" or "Vincent Quartararo" as it appears on Government's Exhibits 38, 41, 42 and 37.

Q. I show you Government's Exhibit No. 33, consisting of several $1 bills, and ask you if you have formed an opinion as to who wrote the writing in ink on the back of those $1 bills? A. Yes.

Q. And, in your opinion, Mr. Heinrich, who was

(Testimony of E. O. Heinrich.)

the individual who wrote the writing in ink on the back of this $1 bill, Government's Exhibit 33?

Mr. GREEN.—The same objection on behalf of all of the defendants.

The COURT.—The same ruling.

Mr. GREEN.—Exception.

A. The same person that I have described as having written the previous exhibit, and named in these exemplars as V. Quartararo.

Mr. GILLIS.—Q. I show you Government's Exhibit No. 34, [226] and ask you if you have formed an opinion as to who wrote the writing in ink on the reverse side appearing on one of those bills of that exhibit?

Mr. COGHLAN.—What is that exhibit?

Mr. GILLIS.—34.

A. Yes.

Q. And, in your opinion, who wrote the writing in ink appearing upon it?

Mr. COGHLAN.—Which one of those bills is that?

Mr. GILLIS.—On one of these bills; there is only one bill in that exhibit where writing appears.

A. It is A23697110B.

Q. In your opinion, who wrote that?

A. The same person that I have heretofore described as appearing in these exemplars, "V. Quartararo."

The COURT.—Let me see that, please.

Mr. GILLIS.—Q. Have you also examined those bills in that particular exhibit, Government's Ex-

(Testimony of E. O. Heinrich.)

hibit 34, to determine whether or not the remaining bills—withdraw that. Have you examined Government's Exhibit 34 to determine whether or not the typewriting on the several bills in that exhibit was made and written by the same typewriter that wrote the typewriting on the reverse side of the one bill upon which there appears the writing in ink?

Mr. FAULKNER.—The same objection, with the additional objection that he has not qualified as a typewriting expert yet.

The COURT.—I think he is qualified. Objection overruled.

Mr. FAULKNER.—Exception.

A. I have.

Mr. GILLIS.—Q. In your opinion, is all of that typewriting on the several bills made by the same or by a different [227] typewriter?

A. The writing on the back in red ink is all made on one and the same typewriter.

Q. I now ask you to examine Government's Exhibit 35 and ask you if you have formed an opinion as to who did the printing in indelible ink on the reverse side of that $1 bill in that exhibit?

A. The same person whom I have heretofore described as being named in the exemplars as V. Quartararo.

Mr. GREEN.—The same objection on behalf of all of the defendants, if it may be interposed prior to the answer.

The COURT.—Yes; the same ruling.

Mr. GREEN.—Exception.

(Testimony of E. O. Heinrich.)

Mr. GILLIS.—Q. I show you Government's Exhibit 36, and ask you if you have examined the several bills in that exhibit to determine who wrote the writing in ink on the reverse side of those several bills?

Mr. GREEN.—The same objection.

The COURT.—The same ruling.

Mr. GREEN.—Exception.

A. What is the question?

Mr. GILLIS.—Q. If you have formed an opinion as to who wrote the writing on the reverse side of the bills in that exhibit? A. Yes.

Q. In your opinion, who wrote it?

A. The same person as is named in these exemplars, V. Quartararo.

Mr. GILLIS.—I now, may it please the Court, offer in evidence Government's Exhibit No. 30 and ask that it be marked Government's Exhibit 30 in evidence.

Mr. COGHLAN.—We object to it on the ground that there is absolutely no connection between it and anything else that has been heretofore introduced in evidence, except some testimony of this [228] witness, it is not relevant, material or competent, that there is no proper foundation offered for it, and that it affirmatively shows it has nothing to do with any issue raised by the pleas of not guilty and the indictment.

The COURT.—It is overruled.

Mr. GREEN.—On behalf of all defendants ex-

cept Quartararo it is objected to on the ground it is hearsay.

The COURT.—Overruled.

Mr. GREEN.—Exception.

Mr. COGHLAN.—We object to it also on the ground that it is hearsay on the part of Mr. Quartararo.

The COURT.—The same ruling.

Mr. COGHLAN.—Exception.

Mr. GILLIS.—It may be received in evidence, your Honor?

The COURT.—Yes.

Mr. GILLIS.—I offer Government's Exhibit 33, which has heretofore been introduced for identification, and ask that it be received in evidence.

Mr. GREEN.—The same objection.

Mr. COGHLAN.—The same objection on the part of Mr. Quartararo and all of the other defendants.

The COURT.—The same ruling.

Mr. COGHLAN.—Exception.

Mr. GILLIS.—I offer in evidence Government's Exhibit No. 34, and ask that it be received in evidence.

Mr. COGHLAN.—The same objection.

The COURT.—The same ruling.

Mr. COGHLAN.—Exception.

Mr. GILLIS.—I offer in evidence Government's Exhibit No. 35 for identification, and ask that it be received in evidence. [229]

Mr. COGHLAN.—The same objection.

The COURT.—The same ruling.

(Testimony of E. O. Heinrich.)

Mr. COGHLAN.—Exception.

Mr. GILLIS.—I offer in evidence Government's Exhibit No. 36 for identification and ask that that be received in evidence.

Mr. COGHLAN.—The same objection.

The COURT.—The same ruling.

Mr. COGHLAN.—Exception.

Mr. GILLIS.—I now offer in evidence, may it please the Court, Government's Exhibit No. 32, which has heretofore been introduced for identification and ask that it be received in evidence.

Mr. COGHLAN.—The same objection.

The COURT.—The same ruling.

Mr. COGHLAN.—Exception.

Mr. GILLIS.—Also Government's Exhibit No. 31, I ask that that be now received in evidence.

Mr. COGHLAN.—Also the same objection.

The COURT.—The same ruling.

Mr. COGHLAN.—Exception.

Mr. GILLIS.—Q. Mr. Heinrich, in forming your opinion, and for the purposes of illustration, have you made certain charts and illustrations?

A. Yes.

Q. Will you explain how you arrived at each of the several conclusions as to the handwriting that you have just testified to, using the illustrations that you have made?

Mr. FAULKNER.—We object to it as immaterial, irrelevant and incompetent, the instruments are already in evidence, and if these facts should be brought out, it is the burden of the defense on

cross-examination; it serves no purpose now, once the instruments are in evidence. [230]

The COURT.—The Court of Appeals in the case of 16 to 1 Mining Co. vs. The 21 Mining Co. held distinctly that an expert who had given his opinion could be asked as to the reasons for it.

Mr. FAULKNER.—Yes, your Honor.

The COURT.—That was, as you will recall, a moot point prior to the decision in that case. The question involved there was the testimony of Prof. Lawson with regard to the identity of a certain vein below and above a certain fault. He testified that it was, and the next question asked was what his reasons were.

Mr. FAULKNER.—Precisely.

The COURT.—And it was objected to on the ground that it was a subject for cross-examination.

Mr. FAULKNER.—But, if your Honor please, the distinction the vital distinction between that opinion and this is that the acceptability of these instruments in evidence must rise or fall upon the qualifications given by the witness before they were offered and accepted in evidence.

The COURT.—The same thing would apply, and it has become familiar practice in this court and in the state courts, that a mere statement of opinion, as the Court of Appeals pointed out there, and the Supreme Court of California pointed out in the Vallejo Northern Case, that a mere statement of opinion with regard to a thing might leave the jury cold as to whether they were going to believe it or

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(Testimony of E. O. Heinrich.)

not; but if the person who was testifying as an expert gave reasons for that opinion, and that appealed to the intelligence of the jury, it would be a very different situation.

Mr. FAULKNER.—Suppose that this witness, in giving his reasons which resulted in his opinion, described this opinion, the court has already admitted the instruments in evidence. [231]

The COURT.—I know, but I have plenty of power to strike it out. Are you going to put these up, Mr. Heinrich?

The WITNESS.—Yes.

(Thereupon a short recess was taken.)

Mr. GILLIS.—Q. Mr. Heinrich, before giving the reasons for the conclusions which you have come to, as just testified, I will show you exhibit for identification—Government's Exhibit No. 28, and ask you if you have examined that with the other exhibits in this case to determine in whose handwriting the name written on the page "J. H. Mason" and "J. A. McLennon" were written in?

A. I have.

Q. In your opinion, in whose handwriting were each of those names mentioned?

Mr. FAULKNER.—I submit that has already been asked and answered.

The COURT.—No, this is the hotel register.

Mr. FAULKNER.—Pardon me, I thought he handed him something else.

Mr. GILLIS.—No.

Mr. FAULKNER.—The same objection to the

hotel register that we made at the time the ship's register was offered to the witness, if the Court pleases.

The COURT.—I am inclined to think that is good, Mr. Gillis. I cannot see the materiality of these entries in the hotel register.

Mr. GILLIS.—They were simply used in arriving at his conclusions, showing the different characteristics of the handwriting of the names.

Mr. FAULKNER.—You will remember, Mr. Gillis, that you were unable to identify the hotel register.

Mr. GILLIS.—That is why I only offered it in evidence for identification. It was not offered in evidence. I am simply [232] asking him now to identify the names in there.

The COURT.—But in order to use that in any wise for exemplification it would have to be shown that that was in the handwriting of the persons involved.

Mr. GILLIS.—That is what I am showing and if there happens to appear in this particular instrument certain characteristics that he works from he may use that after identifying it with the original.

The COURT.—I think that is putting the cart before the horse, the way it seems to me. In other words, an expert takes exemplars of handwriting and then on those exemplars he arrives at an opinion as to disputed handwriting; then having arrived at the opinion as to the disputed handwriting he

(Testimony of E. O. Heinrich.)

could not use the disputed handwriting as an exemplar upon which to base his opinion as to another.

Mr. GILLIS.—Only if this state of facts occurred: There may be certain figures and letters made on the exemplar and upon this document which are commonly characteristic and which do not appear upon the questioned document. There may be then figures or letters which are characteristic to the questioned document and this instrument which do not appear in the exemplar.

The COURT.—That is really another way of stating just what I have said. I will sustain the objection.

Mr. GILLIS.—Q. Will you continue, Mr. Heinrichs?

A. (Continuing.) I will take up first Government's Exhibit 17, which is the mate's log-book and concerning which I have testified that it was my opinion that all of these entries lying between August 25 and October 12 were written by one and the same persons. Looking at the writing first independently of a comparison with any exemplar, and comparing the pages with each other I find that they run uniformly, as shown by the specimen that I have placed on [233] the board of a comparison of the entry appearing opposite the date "August 25." This entry begins with the name "J. H. Mason joined the ship as chief engineer," and continues in the form of a running diary until the record closes—

Q. Before you continue, Mr. Heinrich, may I

(Testimony of E. O. Heinrich.)

ask that you mark the illustration that you are using 43, and the next one 44.

A. Yes. The question of identifying the several pages with each other I find to be entirely a matter of checking out the continuity of the writing quality, the manner of making the connections and the manner of making the capitals and their proportions to the small letters. Starting first with the "J" as we have it in "J. J. Anderson" and "J. H. Mason," and taking up the other capitals as they run along in these first two lines and as the other letters are picked up, and tracing them right through the pages, for example, as indicative of the manner done, in the third line I pick up the capital "W"; on the ninth line of the writing I pick up the capital "W" and find that we have the same flat feature at the base which identifies the letter of that particular writer. So all through the writing. I found it to be entirely regular and normal without any wandering movements indicative of dissimulation or disguise; for that reason I confined myself in comparing it with the exemplars, the ship's articles, to making a comparison of the name "J. H. Mason" which appears as the very first word in the mate's log on the first line after the date, and which is a complete specimen or a regular normal specimen of all of the writing which lies between August 25 and October 12. On the exhibit which is marked 44, the upper name is "J. H. Mason," is an enlargement of the name "J. H. Mason" as it appears on the mate's log following the date "August

(Testimony of E. O. Heinrich.)

25." Immediately below it is the name "J. H. Mason" as it is signed on the ship's articles, which are Government's Exhibit 19. There [234] the most comprehensive statement I can make concerning this writing of these two names is but I can find absolutely no characteristic differences from every point of view from which I have considered these signatures; from the point of view of formation of capitals, of the proportion of the spaces apart, from the upper loop of the "j" to the lower loop of the "j," the manner of running into the "h," the manner of dropping the stroke at the first tip of the "h" and going over to the second tip of the "h," and connecting it with the "m"; the shortening of the first and second shoulders of the "m," and the writing pressure in going over the tip of the "m," the manner of disconnection between the "m" and the following "a"; the oversize of the "a" as compared with the "s"; the collapse of the "o" as compared with the ovality of the "a"; and the general slurring off of the "n" into a horizontal movement ending in a sharp abrupt upward stroke. All of those in every particular, writing pressure, formation, spacing, proportion, and so on, those two writings are identical. There are no characteristic differences. For this reason I came to the conclusion that I have expressed as my opinion, that the same J. H. Mason who signed the ship's articles is the same J. H. Mason who kept the mate's log and who started it August 25, 1924, and continued it through to October 12.

(Testimony of E. O. Heinrich.)

Taking up the log, which is Government's Exhibit 6 in this case, we have there with respect to the different pages I have enumerated a similar situation as to the regularity of the writing from the beginning to the end.

Q. Before you continue, Mr. Heinrich, have you finished with these two? A. Yes.

Mr. GILLIS.—If the Court please, may I ask that the two illustrations, 43 and 44, be introduced in evidence and marked Government's Exhibits 43 and 44? [235]

Mr. FAULKNER.—We object as immaterial, irrelevant and incompetent; the testimony is in.

The COURT.—I will overrule the objection.

A. (Continuing.) The writing in Government's Exhibit 6 is entirely normal, characteristic of the writer, without dissimulation or disguise, and has that regularity which leads me to regard it as the writing done under ordinary conditions of keeping such a set of records. This writing is of a peculiar individual character which at once identifies the writer when this writing is compared with similar specimens of his writing. I want to show first one page of that writing, a complete page.

Mr. GILLIS.—Q. You can number that "45."

A. The exhibit which I have marked 45 is a representation of page 41 of Government's Exhibit 6. It has entries covering the dates September 17 to September 23, inclusive. The particular feature of that writing which identifies it as the work of a particular individual is the expression throughout

(Testimony of E. O. Heinrich.)

the writing of what looks like a tremor; it is not a tremor, strictly speaking, but is the exemplification of a disquality or a stiffness in the writer's fingers and thumb which caused the oval members to be made in angular breaks which produce an angular character to the writing. All of the writing in this book of this writer shows, when we consider the oval movements, that the writer's thumb does not co-ordinate properly with the fingers; it is weakest on the retreat movements, in which the fingers are the dominating movement, or the downstroke, and is strongest on the movements to the right, or the right oblique upward, where the thumb dominates. The result is that on oval movements this writer instead of a curve makes his ovals with a hexagon. These sharp angles in making a complete oval are very clearly defined; and on other occasions some of them are clearly defined and others will take the form of a [236] curve either on the outside or the inside of the corner about which the co-ordination between the finger and the thumb is taking place. I have a specimen now on the board which I will mark 46 on which this particular feature I have just described is illustrated in a clear way.

Mr. FAULKNER.—If the Court please I object to the witness indicating or making any reference to the exhibit he is now pointing to upon the ground that, as I recall it, this particular instrument was excluded from evidence.

The COURT.—What is that?

Mr. FAULKNER.—That is a copy of a cargo

(Testimony of E. O. Heinrich.)

list. Your Honor ruled that a copy of an official list would not be admissible in evidence. That is my recollection.

The COURT.—That is quite true, I think.

Mr. GILLIS.—I think your Honor's ruling went to the point that it could not prove the cargo aboard the "Quadra"; in other words, that it was not an official manifest of the list of articles which constituted the cargo of the "Quadra."

The COURT.—That is clearly what I had in mind. It might be an exemplar of handwriting just the same. I think that so long as it has been excluded I will sustain the objection.

A. (Continuing.) Such point as I wish to show on 46, which I have removed from the board, I can call to your attention as clearly exhibited in the word "alongside" on line 6 of Exhibit 45. There we have the word beginning with an "a" and we have that oval formed there in the completely defined hexagon which I have called to your attention which is characteristic of this writer's circular movement. That portion on Exhibit 46 which is left off, removing some of it, I will place alongside; it is a portion of page one, the upper left-hand corner, and bears the name "J. A. McLennan." It is so small that the jury will [237] perhaps not see that, but I will put a larger one on in a moment or two. I wish to call attention to this, that this writing is in exact proportion as it appears in the book to the other writing. The writing on the ship's article is larger than this in the book

(Testimony of E. O. Heinrich.)

as the pages run along. In studying this in co-ordination difficulty which this writer has, it might be called a writer's infirmity due to stiffness of the hand based on overdevelopment of the muscles of the thumb and fingers for other work, this angular feature, the over-movement, runs throughout the writing, whether it is in very small writing, such as exhibited on 46, or in the larger writing shown on 45. I show this same name, or at least the exemplar name as it appears on Government's Exhibit 19; and there I wish to call particular attention to the manner in which the angular turning movement enter into the writing and prevent this writer from making a small oval curve. In the "a"—the "a" of the name "J. A. McLennan," the "a" starts with a wandering movement and comes to a point immediately above the center of the letter, at the top of its major axis; there the letter really starts, rises upwards, makes an angular turn obliquely downward to the left; the movement is carried to a point slightly below the central point, below the left of the minor axis, and so the co-ordination has been affected fairly well, only to be lost in reaching the bottom of the letter; the thumb in its inability to make the oval movement has forced the pen to make a wave to the right with an angular turn at the bottom where the change of direction occurs which finishes the letter as far as the oval is concerned. In turning the second oval closing the "a" we have again a diamond-shaped pattern instead of the smooth curves. This runs throughout this writ-

(Testimony of E. O. Heinrich.)

ing on all of the thumb strokes; the thumb strokes are the upstrokes. They are either deficient entirely as you see them in the "n" or they are of unusual likeness in comparison with the finger strokes; that is, the thumb [238] on the retreating movement is the weakest element of this writing but is one of the strongest elements on the horizontal movement to the right as is shown in the terminal of the word "McLennan." This is an identification of the person's habits based on the muscular construction of the hand, and is individual and is of an identifying character.

Mr. GILLIS.—Q. The sheet which you have been referring to, Mr. Heinrichs, will you mark that 47?

A. Yes. I have taken the writing as it appears in Government's Exhibit 19, the ship's articles, and compared it with similar groups which I selected from the log, Government's Exhibit 6. The first of these is a comparison of the words "Vancouver" and a comparison of the words "Coal Harbour." On the exhibit which I will mark 48, in each group I have at the top the word marked over on the right side, "S. A." as it appears on the ship's articles, Government's Exhibit No. 19. Below that are three examples found in Government's Exhibit 6. The first example, the word "Vancouver" is from page 40, line 2; the second example from page 3, line 1; the third example from page 2, line 1. With the word "Coal Harbour" the first one shown comes from the ship's articles, Government's Exhibit 6—

Mr. FAULKNER.—Just a moment. If your Honor please, the same objection to page 2 and page 3. He is now comparing signatures on an instrument excluded from evidence. Here is the book.

Mr. GILLIS.—I think that so far as that particular part of page 2 is concerned I can see no reason why that should not be admitted in evidence. It has no reference whatever to the cargo in any manner, shape or form. It is a writing in the book, the same as any other writing in the book.

Mr. FAULKNER.—Then it becomes immaterial, irrelevant and [239] incompetent because, as your Honor will recall, the book was entered in evidence and portions of it read to the jury upon the theory that it was a *quasi*-official record in connection with the "Quadra".

The COURT.—Yes, it was partly that but you will remember this book was found in the cabin of the supercargo on board the "Quadra" herself.

Mr. FAULKNER.—Yes, but in a position that could not identify it as an official log. You will remember that, too.

The COURT.—Yes. It was not necessarily so identified. I don't see that on page 2.

Mr. FAULKNER.—It is right on the top, your Honor.

The COURT.—The word "Vancouver"?

Mr. FAULKNER.—That part is not in evidence.

The COURT.—I will admit it in evidence now.

Mr. FAULKNER.—The one word?

The COURT.—So much as is necessary; that

(Testimony of E. O. Heinrich.)

part which does not have anything to do with the copy of the ship's manifest; that is, such part of it as has nothing to do with the cargo of the vessel, which purports to be a mere copy of the manifest will be admitted now for the sole purpose of comparison of handwriting.

Mr. FAULKNER.—Exception.

A. First, I wish to state that the ship's articles, Government's Exhibit 19, are written in ink, and Government's Exhibit 6 is written in pencil. To this extent, there is a difference between the writing of the two exhibits, that the pencil writing shows greater care of movement than the pen writing, but, other than that, the entire group, and the manner of formation of these undivided letters, proportion for proportion, are in complete agreement with each other. Take the group, "Vancouver," [240] as an illustration. We find, first, that the writer has broken in three of the four examples to the horizontal between the "n" and "c"; the line from the "n" points to the "c" and has the appearance of a connection, but it does not go clear around to the end. The word from "c" to "r" runs along as a complete group, and breaks on the "e" and "r" in such a way that the "er" is suddenly diminished over the formation "ouv", and the thumb takes a dominant part in the movement, and gives a horizontal terminal, or a terminal with that extra heavy pressure on the end of the line. In the exemplar from the ship's articles the terminal shows an extra pressure, such as shown in the example

(Testimony of E. O. Heinrich.)

on page 3, line 1, and in the example from page 40, line 2, it takes a horizontal form as we saw in the picture appearing on the ship's articles. The pattern of the capital and the position at which the thumb enters the stroke, and causes the final movement to break at a point at least the height of the "a" immediately following the "V" is identical here; the weight of the stroke of the first limb of the "V" as compared with the second is of an identical order. The hexagon feature of the "a" is shown very clearly in both the example from Exhibit 19 and particularly in the group from page 40, line 2. There we have a very clear demonstration of the inability of this writer to coordinate his thumb and finger sufficiently to make a smooth curve at will; he will frequently make smooth curves, but, as a matter of habit, the angular movement, the angular turns predominate. That is true all along the bases of the line; point for point, we have the same type of fault entering the line, and producing the same appearance, and the same effect on the writing, from any point in the writing to the next; the manner of the formation of the "a" shown in "Vancouver" taken from page 3, line 1, in which the initial portion of the "A" passes over [241] to the right side of that letter and forms a cap, is the same feature that we find in the signature where the inability to control the movement has resulted in almost a flourish. The limbs if the "n", or the shoulders of the "n" are separated in the same way, and "c" has the same

(Testimony of E. O. Heinrich.)

elevation in its proportion to the "n", the "n" being reduced in size between the "a" and the "c," in precisely the same proportion, and so on throughout the name. These same features appear again in "Coal Harbour." Here we have in the exemplar still greater difficulty in control of the writing instrument, which has resulted in a still more marked appearance of the pseudo tremor; the down strokes are very heavy; the light strokes are light in proportion, and formed without control; that same feature runs throughout the word "Coal Harbour." And again the same features of form and formation run through these words, and particularly calling your attention to the new letter introduced here, the capital "H," in the three example specimens taken from page 43 line 18, the word is over-written, or the word "Coal" has been written over the syllable "Van;" it appears from the context "Vancouver" was started to be written and was corrected to the word "Coal." Now, independently of minutia, the fact that all this writing is in the same writing system, that the proportions of the small letters to capitals are uniform throughout, and there are no eccentricities in the way of differences in pattern in any way in this writing, plus the extremely individual character of this incoordination effect, this pseudo tremor, which produces angles where we should have curves, and produces a hexagon on a complete oval, this is sufficient, in my judgment, to completely and fully identify the writer of the name on Exhibit

(Testimony of E. O. Heinrich.)

19, the ship's articles, as the writer of the log. Now, I will take that name and compare it with groups taken [242] from the ship's log, where we can see the manner in which these groups appear elsewhere.

Mr. GREEN.—If I might interrupt, I do not think it is quite fair the witness to insist on referring to this book as the ship's log. It has none of the earmarks of a ship's log, at all.

The COURT.—I do not think that does any harm, however, Mr. Green. Of course, the terms "log" is a very elastic term, as it applies to a ship; it is frequently used for any sort of a diary or narrative of events by anybody on board. It is perfectly apparent what it is, that it is a record kept by somebody.

Mr. GREEN.—A diary?

The COURT.—Yes, a diary. Of course, Gentlemen of the Jury, you are not to understand from anything said by this witness that the book to which he has referred is the official ship's log.

Mr. GILLIS.—Will you mark that sheet 49?

A. Yes.

The COURT.—I note also that I referred to Mr. McLennon as the supercargo or ship's husband, I think there has been no evidence of that. As denoted by the ship's articles, he was shipped as an A. B.

Mr. GREEN.—Yes.

The COURT.—So the jury will pay no atten-

(Testimony of E. O. Heinrich.)

tion to that. I thought he was shipped as supercargo.

Mr. GREEN.—I was going to call your Honor's attention to that, later, but I am glad that you noted it.

A. In addition to this "Coal Harbour" and "Vancourver" appearing on exhibit 19, there appear the words "Port Hastings" and the name "J. A. McLennon"; the name "J. A. McLennon" appearing on the exhibit 49 is the same as I have shown heretofore on exhibit 47. Now, here, we have a direct comparison of the manner of writing the name "J. A. McLennon" on exhibit 49 with the manner [243] in which it appears on page 1 of Government Exhibit 6. There are but two differences. The first is the difference in size. The name appearing in the book is written very small; the second is the difference in the writing instrument; the name of the book is written with a pencil, and the name on Government's Exhibit 19 is written with a pen. The first feature of identity is the individual development of the capitals. This writer, in making a "J" has developed a flying start, which is a down stroke; he starts above the line at a point about where the top of the letter belongs, drops to the line, and then turns without the formation of the loop and goes in an oblique direction to the left, and upward to the top of the letter, and brings the movement down into the formation of the lower loop of the "J," and it passes into the next letter. That is precisely what

(Testimony of E. O. Heinrich.)

we see in the formation of the "J" as it appears in Government's Exhibit 6. The "a" following has the characteristic hexagon feature, both on the oval, on the main oval, and on the eyelet which closes that letter, and the movement passes to the "M" with the same ratio of weakness of up stroke but heaviness of strength of down stroke that we saw in the "M" of the exemplar. The "c" following the "M" is developed in such a way that it appears without an analysis to be a part of the following letter "L." Here, again, we have an identity in the pattern, particularly in the direction of its deformation, the "L" running considerably below the line vertically instead of stopping at the base line and forming the oval on the base line. The formation of the "ennan" takes the same angular character with the tremors or angular breaks showing in the turning movement that we found throughout the name in the exemplar, and the same increase in weight, showing the domination of the thumb movement coming in the terminal. We find that same movement as a group, the latter part of "McLennan," express in the group "ennessy" from page [244] 2, line 27. The capital "M," so far as weakness of upstroke, the back hand slope of the letter, as a whole, and the extra weight of the downward movement is shown in the group "McKay"; also the hexagon form of the "c" in that group, as taken from page 2, line 7, as compared with the exemplar. Again, in the abbreviation "A. M." taken from page 45, line 22, and another example taken from page 43,

(Testimony of E. O. Heinrich.)

line 13; and here, again, I wish to call attention to the peculiar hexagon nature of these ovals. It is shown completely in the example "A. M." taken from page 43, lines 18.

Mr. FAULKNER.—If your Honor please, might I interrupt at this time; the reference of the witness to the word "Hennessy" will come in on this same ruling, that it is solely for the purpose of identification of the handwriting?

The COURT.—Yes. Is that from a part of the copy of the manifest?

Mr. FAULKNER.—Yes.

The COURT.—Yes, that may go in also, that word may go in, but only for the purpose, Gentlemen, of furnishing an exemplar of handwriting, and not as evidence of what the ship's cargo was.

A. This same dominance of the thumb in the movement to the right is shown in the "t" crossing in the work "Hastings;" the "t" crossing is suddenly turned in an upward direction and in the word "Port" it lies on an upward oblique line. Now, throughout this writing we have this same domination of thumb movement of a "t" crossing upward shown as exemplified in the specimens I have brought here from page 45, line 13. Considering the group "Port Hastings" and comparing it with other exemplars, I have brought here several illustrations of a similar group; we have in "Hastings" the group "ast," and in comparison with that I have brought the word "east"

(Testimony of E. O. Heinrich.)

from page 41, line 25, and page 41, line 14. There we have identity throughout of the movement from "a" [245] to the foot of the "t," including the upward trend of the "t" crossing and the open feature of the foot of the "t," the two limbs compared with each other being more open and extended than should be the case, according to the system standard. In comparison with the letter "p" of the word "Port," I have brought here the word "Pilgrim" from page 43, line 5, particularly to show the manner in which the angularity in making turning movements tends to depress the oval of the "P" into a triangle, both as shown in the word "Port" in the exemplar and in the word "Pilgrim" taken from the book. The capital "H" I have extracted in the word "Heavy" from page 44, line 18, and page 44, line 22, and in those words we have also the "y" which closes without the completion of the loop, and in most cases, such as in the words "strong easterly" taken from page 45, line 13, the loop is abandoned for a horizontal stroke to the left. I have also shown the "p" in comparison from page 42, line 4, with the word "Port," comparing it as a group with the words "Port Hastings." There we have a complete analogy or similarity between the group form from the beginning with the angularity of the oval of the "P" to the abrupt terminal stop of the "t." That is an indication of the manner in which I proceeded, and, as I stated before, the identification primarily rests upon the continuity throughout this writing

(Testimony of E. O. Heinrich.)

and the examplar of the inco-ordinating feature which I have described, and the complete harmony of these various individual forms of the individual letters and their combinations and groups. There are no distinctive characteristic dissimilarities anywhere between the exemplar writing and the questioned writing.

Now, with respect to the bills—

The COURT.—Just a moment.

Mr. GILLIS.—Before we adjourn, might I ask that the [246] sheets 45, 46, 47, 48 and 49 be introduced in evidence and marked as Government's exhibits in their order?

The COURT.—Yes.

Mr. GREEN.—Might I ask the district Attorney, through the Court, if the logs that I have asked for this morning have been brought into court yet?

Mr. GILLIS.—I have the logs here.

The COURT.—We will take an adjournment now until Tuesday morning at 10 o'clock.

(Tuesday, March 17, 1925.)

Direct Examination (resumed).

Mr. GILLIS.—Q. Handing you Government's Exhibits 30 to 36 inclusive, which are the one dollar bills, Mr. Heimrich, in arriving at your conclusions which you have already stated with reference to these bills, have you made any illustration to illustrate and reason and conclusions that you have come to?

(Testimony of E. O. Heinrich.)

A. No, sir; the writing is on money, legal tender of the United States, and I am not at liberty to photograph money.

Q. And that is the reason no photographs were taken of them? A. Yes.

Q. Will you examine these several exhibits and point out your reason for arriving at the conclusions which you have already testified to with reference to those bills?

A. May I have the exemplars, please.

Q. Yes.

A. The conclusion rests on the results obtained in a similar method followed in the examination of the other writing, that is, an examination into writing determined the manner in which the peculiar muscular co-ordination of the hand leaves its effect in the writing. This is a microscopic [247] examination and without photographic illustration and is very difficult to show. However, this writing on the bills and the printing on the bills is tagged in a characteristic way. There is common to the writing on the bills and the printing on the bills numbers in each case, it being a part of the phraseology and indicating qualities These numbers run along in units ranging from 5 to 500—5, 10, 20, 30, 40, 50, 75, 100, 200, 300, 400, 500. Those numbers, which end in zero, the hundreds which have the double cipher, and the multiples of ten, are all characteristic, several of them embodying the peculiar mannerism of this writer which is found in the exemplars—

Mr. COGHLAN.—Pardon me, but do I understand, your Honor please, that these bills were offered and received in evidence?

The COURT.—Yes.

Mr. GILLIS.—Yes, they are all in evidence.

Mr. COGHLAN.—Was there a limited purpose for their reception, for the purpose of comparison, or what?

Mr. GILLIS.—You mean the bills?

Mr. COGHLAN.—The bills.

Mr. GILLIS.—The bills were received in evidence for all purposes.

The COURT.—They were received generally.

Mr. COGHLAN.—We desire at this time, your Honor—and I think we need not object hereafter in addition to this—to object to the evidence which is now being adduced upon the ground it is not material, relevant or competent, on the ground that these bills have no foundation in the facts that have been up to this date adduced; that there is no evidence here which can be used as a predicate for their use in evidence in this manner, or, in fact, we claim for their reception in evidence at all upon the [248] general issue, because there is no evidence connecting them with any transaction affecting either the "Quadra" or the "Malahat" or any of the several small boats to which reference has been made here in the evidence, or any other source of intoxicating liquors claimed by the prosecution, and because these bills are in no way connected with any of the persons

(Testimony of E. O. Heinrich.)

claimed as conspirators here, or claimed to be conspirators by the prosecution, or persons having to do with the conspiracy charged; and because they have not been shown to have been used in connection with any alleged conspiracy, or any of the operations here claimed by the Government, or to have been used at all by any person here concerned as defendants, or any person unknown and claimed to be a conspirator, or in any manner to effect the purpose or object of the conspiracy alleged and claimed by the prosecution.

The COURT.—Objection overruled.

Mr. COGHLAN.—To which we reserve an exception.

A. The exemplars, Government's Exhibits 39 and 40, consist of checks, one check in each case. On an examination of the numbers and words written into these checks it appears that this writer has a manner of making the cipher or the letter "o" when that movement appears in script on a very large number of occasions, about half the total number of occasions, in such a way that the letter is commenced on the right side, makes the oval movement and has the terminal movement pass outside the initial movement in many cases; the initial movement being well below the central minor axis of the letter parallel to the base-line. In other cases the finishing stroke will pass just inside. The result of this manner of making the letter is particularly prominent where a double cipher or the double letter "o" occurs. In the one

(Testimony of E. O. Heinrich.)

check here we have the word "Roos Brothers" *which includes [249] the double* "o" and the movement passes—the first "o" is made after the movement described and then passes into the second "o" with a poorly defined change of direction from the first to the second and makes the change of movement into the second "o" with a reverse loop whose axis is parallel to the base-line and which again fails to close sharply and moves off into the other letter. Now, I find first that where we have such numbers on these bills as 100, 200, 300, 400, 500, that we have this peculiar combination. Where we have the number 50 appearing on the bills we have in many cases the "5" joined to the "o" in the same manner that we find the second "o" is joined to a preceding "o" where the double "o" or double cipher occur together. That feature is common to all these bills which have the double cipher and to practically all of the bills which have a zero preceded by a "5." That is true both for the bills which are filled out in script and also for the bills which are filled out with printing.

In exhibit 36 typical examples of such bills are the bills numbered "A23697161B" and which has on the back the quantities "400 pints" and "100 Plymouth." The bill "A23697160B"—

Mr. COGHLAN.—Just a moment, are those the printed numbers of the bills—just what are you reading?

(Testimony of E. O. Heinrich.)

A. Yes, the printed numbers, that is, the serial number of the bill. That last bill has the quantity "100 C. S. Highland Queen" written on it.

Another example carrying the group "50" as well as the group "100" as illustrated on the blackboard, is the bill which is marked "A23697145B" and which forms a part of the group Government's Exhibit 33. These numbers on those bills which are printed may be seen again in this peculiarly characteristic form on bill "A23697116B" which forms a part of Government's Exhibit No. 30 where we have the number "100" and the number "50" appearing as [250] described.

In addition to the common features of the numbers running throughout these bills the printing on the different bills compared with one another over those bills which vary in their appearance I have been enabled to check out on the formation of capitals, particularly the capital letter "G." The capital "G" in this series is peculiarly made in respect to its finishing stroke. In all the cases where the "G" is made the finishing stroke is a horizontal line whose movement is from right to left, with a second stroke running diagonally downward to the right, giving at that point of the letter a v-shape formation or an arrowhead pointing to the center of the letter.

The study of the manner of operating the pen and holding the pen was based on the determination of the points at which the pen nib crossed and recrossed each other. In making a circular move-

(Testimony of E. O. Heinrich.)

ment with a pen, because the pen is a two-pointed instrument and does not revolve in the hand, the path made in the paper by the nibs of the pen cross and recross each other. The position at which this crossing occurs determines the position of the hollow of the pen with respect to the base line of the paper or with respect to the palm of the hand, either being available as a datum or reference line; the weight on either one of the furrows determines the point or direction the pen was tilted. This writer in all cases on these bills holds the pen in such a way that the angle of reference or the angle of the hollow of the pen to the base line is approximately 40 degrees. The pen is held with the pen pointing over the elbow, away from the body, and it results in a form of writing which has a slope of approximately [251] 45 degrees with angular connections at the bases and angular turns over the tops of letters in the left to right direction. This manner of holding and operating the pen is identical both in the printing and the writing, and together with these individualisms in form which I have described serve to identify the writer of the different exhibits that I have enumerated as being the same as the writer of the exemplars Government's Exhibits 38, 40, 39—let me repeat, Government's Exhibits 39 and 40, which are the checks, and those portions of Government's Exhibits 38, 37, 41 and 42, which read "Vincent Quartararo" that name appearing as a signature to those exhibits.

Mr. GILLIS.—You may cross-examine.

Mr. COGHLAN.—No cross-examination.

(Rep. Tr., pp. 307–344.) [252]

Whereupon Volume 3, Section 152, part 3 of Chapter 13 of the Revised Statutes of Canada for 1906, which is headed, "An Act Respecting Shipping in Canada" was offered in evidence, which reads as follows:

"Engagement of Seamen and Agreement."

"152. The master of every Canadian home-trade ship of or above eighty tons registered tonnage shall enter into an agreement with every seaman whom he carries as one of his crew, in the manner hereinafter mentioned.

"2. Every such agreement shall be in form H, or as near thereto as circumstances permit, and shall be dated at the time of the first signature thereof, signed by the master before any seaman signs the same, and shall contain as terms thereof particulars of,—

"(a) the nature and, as far as practicable, the duration of the intended voyage or engagement;

"(b) the number and description of the crew, specifying how many are engaged as sailors;

"(c) the time at which each seaman is to be on board or to begin work;

"(d) The capacity in which each seaman is to serve;

"(e) the amount of wages which each seaman is to receive;

"(f) a scale of the provisions which are to be furnished to each seaman;

"(g) any regulations provided by form M as to conduct on board, and as to fines, short allowance of provisions, or other lawful punishments for misconduct which the parties agree to adopt. R. S., c. 74, s. 25."

(Rep. Tr., pp. 346, 347.)

(Whereupon Certificate No. 5608, entitled Certificate of Incorporation of the Companies Act of Canada, of the Canadian-Mexican Shipping Co., Ltd., the certificate of the solicitor that all the [253] requirements of the Companies Act had been complied with, the memorandum of association of the Canadian-Mexico Shipping Co., Ltd., the annual report to May 15, 1922, made under the Companies Act of 1921, of the Canadian-Mexican Shipping Co., Ltd., the Annual Report under the Companies Act of 1921 to June 19, 1923, and the Annual Report of the Canadian-Mexican Shipping Co., Ltd., under the Companies Act of 1921, to June 20, 1924, duly certified, were offered in evidence on behalf of the Government, and were marked U. S. Exhibit 51.)

Mr. GILLIS.—The instruments in exhibit 51 have been certified to by the Registrar of Companies for the Province of British Columbia, to the effect that the copies here attached are true and correct copies of the originals, issued as required by the laws of the Province of British Columbia. Attached to that is the certificate of the Deputy

Provincial Secretary of the Province of British Columbia, setting forth the fact that the Registrar, Herbert Garrett, is the duly appointed registrar of the companies for that province, and that the signature and seal annexed to the instrument are the signature and seal of that individual as such registrar, and that he has in his custody the original documents of the Canadian-Mexican Shipping Co.; and attached to that is the certificate of George A. Bucklin, Consul of the United States of America, at Victoria, certifying the official status of the Deputy Provincial Secretary of the Province of British Columbia.

(Whereupon certified copies of the certificate of the Consolidated Exporters Corporation, Ltd., under the Companies Act of 1921, a memorandum of association of Consolidated Exporters Corporation, Ltd., a notice of change of directors dated December 1, 1924, showing a change as of June 2, 1924, the Annual Report of the Consolidated Exporters, Ltd., under the Companies Act to October 31, 1923, the Annual Report of the Consolidated Exporters, Ltd., to December 10, 1924, under the Companies Act of 1921, were offered in evidence.) [254] These instruments are certified by H. G. Garrett, the Registrar of Companies in the same manner in which exhibit 51 has been certified.

Mr. GILLIS.—I now offer these in evidence and ask that they be marked Government's exhibits next in order.

Mr. CROWLEY.—To the offer, if your Honor

please, we object upon each of the following grounds, severally and distinctly:

In addition to the objection that the indictment does not state facts sufficient to constitute any offense, we object on the ground that it is immaterial, irrelevant and incompetent, not within the issues, self-serving, hearsay, *res inter alios acta,* too remote from the time at issue, and not the best evidence.

There was and is no evidence showing or tending to show *prima facie,* or at all, the existence of the alleged conspiracy, or of any conspiracy, and there is no evidence showing or tending to [255] show that we were or are connected therewith, had any knowledge thereof, or participated therein.

There is no evidence or foundation to connect us with the instrument offered, or that we are personally or otherwise or at all responsible therefor, participated therein, or had any knowledge thereof, or that the same was made or kept under our direction, or with any knowledge concerning the same or its contents.

No foundation therefore has been laid as to us.

There was and is no foundation for the admission of this instrument in evidence.

There is no attestation or authentication thereof in due form of law, or as required by law, or at all; there was and is no warrant therefor under any federal statute, and no compliance with the requisites, if any, of the state statute, if any.

The said instrument was and is incomplete and not entire, specifically among other things in this,

that there is not contained therein the articles of association themselves issued, there is no evidence or certificate or attestation that the clerk or person mentioned was or is the legal custodian or keeper of said record, or of the original thereof, or had any right of custody thereof, or that said person had or has any authority to furnish any purported or authenticated copy thereof; there is no seal of the or any court annexed or attached to the purported certificate; there is no certificate of the Judge, or Chief Justice or presiding magistrate that the attestation purported to be made here is in due form.

It does not appear that the instrument is one which is authorized or provided for by the law of the land whence it comes; there is no proof of any foreign law or statute of such land, requiring such record or statement to be filed or recorded as an official or other duty; there is no proof as to the force or effect [256] or faith or credit, if any, said instrument has, if any, under said or any law or statute or usage in the courts of the place whence the instrument purports to come; nor is there any evidence or certificate under seal of the country or sovereign showing or tending to show that the same was or is a valid or subsisting document of such country or land; there is no certificate under the seal of said country or sovereign thereof; and the said purported consular's certificate was or is not evidence herein, and the same was and is invalid being without the, or any of the, stamps required by law; there is no evidence that this purported

copy is duly certified by the officer having the legal custody of the original or what under the law of said country or land was or is due certification or attestation thereof; the instrument offered is not the record of any court and is non judicial in its character.

We are prepared to defend that objection, your Honor.

The COURT.—Let me look at it.

Mr. FAULKNER.—If the Court please, I think, that for the purpose of the court in passing on this matter, Mr. Gillis should indicate the purposes for which it is offered.

The COURT.—If you will let me look at it maybe I can find out.

Mr. CROWLEY.—What your Honor is looking at now is the memorandum of association.

The COURT.—The objection is overruled.

Mr. FAULKNER.—If your Honor please, before the ruling is made may this be included as a part of the objection, the very cogent objection that it is immaterial, irrelevant and incompetent, the corporation set forth in the instrument not being a party of the conspiracy, not being connected by any evidence of conspiracy; and particularly on behalf of the defendant Bellanger that there is no [257] evidence in the record or offered in evidence that he was a director or had anything to do with the corporation at any time claimed in the indictment that a conspiracy existed.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

Mr. CROWLEY.—We note an exception, your Honor.

(U. S. Exhibit No. 51.)

(Rep. Tr., pp. 349–351.)

(Whereupon a certified copy of the report outwards from the port of Vancouver, British Columbia, of the steamship "Quadra" dated September 9, 1924, was offered in evidence.)

Mr. CROWLEY.—We make the same objection we have heretofore made, your Honor, being the last objection I personally made to the last offer.

Mr. FAULKNER.—The same objection in its entirety, and the further objection that it is full of erasures and several kinds of handwriting.

The COURT.—Objection overruled.

Mr. CROWLEY.—Exception.

(U. S. Exhibit No. 52.)

(Rep. Tr., p. 351.)

Whereupon the report outwards from the port of Vancouver, British Columbia, of the auxiliary schooner "Malahat," May 23, 1924, was offered in evidence. This copy was duly certified in the same manner as the other exhibits offered are certified.

Mr. CROWLEY.—We make the same objection as heretofore specifically and at length made to Exhibit No. 51.

Mr. FAULKNER.—We desire to supplement that, your Honor, the steamer "Malahat" is not a party to this conspiracy, and the evidence contained therein can only be binding upon certain of the [258] defendants that are connected with the "Malahat," and it would be immaterial, irrelevant

and incompetent and the proper foundation not laid as to any other defendant, particularly the officers and members of the crew of the "Quadra" and the defendant Bellanger.

The COURT.—Objection overruled.

Mr. CROWLEY.—Exception.

Mr. FAULKNER.—And also all of the other defendants.

Mr. COGHLAN.—We reserve an objection.

(U. S. Exhibit No. 53.)

(Rep. Tr., p. 352.)

(Whereupon the report outwards from the port of Vancouver, British Columbia, dated July 5, 1924, of the steamship "Coal Harbour" was offered in evidence by the prosecution.)

Mr. CROWLEY.—The same objection we have made at length to Exhibit No. 51.

The COURT.—Was there any evidence, Mr. Gillis, that any of these small boats transferred any liquor from the "Coal Harbour"?

Mr. GREEN.—No, your Honor.

Mr. GILLIS.—In connection with the "Coal Harbour" I simply wish to call your Honor's attention to this fact: That the records of McLennan's log, which have been admitted in evidence, of date October 6, read as follows: "Steamer 'Coal Harbour' in sight about ten A. M. transferred 232 cases Gordon Gin in boats from 'Coal Harbour.'"

The COURT.—Yes. Objection overruled.

Mr. CROWLEY.—Exception.

Mr. FAULKNER.—Exception.

(U. S. Exhibit No. 54.)

Thereupon the Government rested. [259]

Mr. FAULKNER.—I at this time, on behalf of all of the defendants, jointly and severally, move the Court to strike from the evidence exhibits 3, 4, 5, photos of the "Quadra," exhibit No. 6, the log of the "Quadra," photos 8 to 15, inclusive, of the "Quadra," the slip signed by some person whose handwriting could not be identified, exhibit 17, the mate's log—

The COURT.—It is not the mate's log, at all; it is the engine-room log. It is headed that way. As a matter of fact, it is the engine-room log.

Mr. FAULKNER.—That is the manner in which they offered the record.

The COURT.—I understand what you mean.

Mr. FAULKNER.—The certificate of registry, the ship's articles, the sacks of liquor, exhibits 20 and 21, the kegs of liquor, exhibits 22 and 23, the box of liquor, exhibit 24, order for box, exhibit 25, tags, exhibit 26, tag exhibit 27, exhibits 30 to 36, inclusive, the currency bills, and all of the exhibits showing large photostat copies of handwriting in connection with any book, document, or instrument seized from the "Quadra." The motion to exclude that particular evidence, if your Honor please, is based upon the announcement of the Court at the time that all of that evidence was permitted to go into the record subject to being connected up, on the theory that a conspiracy must be shown before any of the evidence would be admissible; on the further ground that as to the defendants, officers and members of the crew of the "Quadra," the

exhibits referred to, taken from the "Quadra," were seized in violation of the rights of the said defendants, under the Fourth and Fifth Amendments, that they were seized pursuant to an illegal arrest of these defendants, and should not, under any circumstances, be admissible in evidence. I supplement the grounds of this motion [260] in particular by all of the grounds urged to your Honor on the motion to suppress and exclude evidence.

Now, then, the Court will, in that regard, have in mind that under the law the seizure of the "Quadra" could only take place at a distance that could be traversed by some vessel with which the "Quadra" was dealing, that could travel the distance from the point of seizure to the North Farallones in one hour, and the record affirmatively shows in this case, if the Court will permit me to indicate it to you, that the "C–55" was the only vessel that got in that position, but it has not been affirmatively shown that the "C–55" was a vessel intended for use in conveying liquor to the United States. The record affirmatively shows in this case that the "C–55" was transferring liquor from the "Coal Harbour" to the "Quadra." There is not in the record any evidence that any vessel with which the "Quadra" was dealing could have traversed the distance from the place of seizure to the "Quadra," or the place at which they dealt with the "Quadra" in less than one hour. Furthermore, the record in this case does not affirmatively establish that assuming that the "C–55" was dealing

with the coast of the United States, that it could have, under the circumstances, presented in the record, traversed the distance from the point of seizure of the "Quadra" to the North Farallones in one hour. We respectfully submit that the burden was upon the customs revenue agent, at the time of the seizure of the "Quadra," if they depended upon the speed of the "C-55" to have at that time, and under those circumstances, traversed the distance from the point of seizure of the "Quadra" to the North Farallones; it was quite within their power to do so, and their failure so to do leaves this Court without jurisdiction to consider all of the evidence seized, as I have indicated, and as the record discloses, from the "Quadra" under these circumstances; and I respectfully [261] ask the Court to suppress all such evidence, and direct the jury to disregard it.

The COURT.—Motion denied.

Mr. FAULKNER.—Exception.

(Rep. Tr., pp. 355-357.)

Mr. FAULKNER.—At this time, if your Honor please, I move the Court on behalf of the officers, master and members of the crew of the "Quadra," and defendant Belanger, jointly and severally, to acquit the defendants, and all of them, that I have mentioned. Said motion is based upon the following grounds:

First. The indictment No. 15,914 does not state facts sufficient to constitute a cause of action; particularly directing the Court's attention that this is a conspiracy to violate the Tariff Law, the lan-

guage of which law reads, that any person who imports merchandise into the United States contrary to law is guilty of an offense, and the law which it is claimed they violated has never been brought to their attention by indictment, or by the district attorney—never brought to the attention of any of these defendants. The venue as to the defendants, officers, master and members of the crew has not been shown.

Second. The Court has not now, and never has had at any stage of this proceeding jurisdiction of the persons of said defendants, or either of them.

Third. The Court has not jurisdiction as to these moving defendants of the subject matter of the offense pleaded or attempted to be pleaded in this indictment, or of the conduct of these moving defendants at all.

Fourth. The *corpus delicti* of the offense has never been established.

Fifth. There is nothing in the record showing a conspiracy and/or an unlawful combination of any kind to violate the laws [262] of the United States.

Sixth. There is nothing in this record showing a conspiracy and/or an unlawful combination of any kind to violate the National Prohibition Act, and particularly the portions thereof set forth in the indictment and/or Sections 593a and/or 593b of the Tariff Act of 1922, and/or the treaty of May, 1924, between the United States and Great Britain.

Seventh. All and each part of the evidence of

overt acts were improperly admissible at the time of receipt.

Eighth. All and each part of the evidence concerning overt acts have not been nor has any part of it been connected up by laying the foundation, viz., the existence of a conspiracy.

Ninth. All and each part of the evidence concerning overt acts have not nor has any part of it been connected up by any foundation at all.

Tenth. All evidence and each part thereof introduced as a result of the seizure of the "Quadra" was illegally admitted and in contravention of the rights of these moving defendants, and each of them, under the Fourth and Fifth Amendments to the Constitution of the United States.

Eleventh. Section 37 of the Criminal Code, under which these defendants and each of them are charged has no application at the place where all acts concerning them were by them committed, at a point admittedly beyond the three-mile limit on the coast line of the United States.

Twelfth. The National Prohibition Act and particularly the parts thereof pleaded in this indictment, and the Tariff Act of 1922, and the sections pleaded in this indictment, have not nor has either of them application beyond the territorial limits of the United States, namely three miles, or a marine league from the coast line thereof. [263]

Thirteenth. The treaty between Great Britain and the United States completely supersedes the application of the National Prohibition Act, and the sections pleaded in the indictment, and the Tariff

Act of 1922, and the sections pleaded in the indictment, and each and every part of each of said acts, and under said treaty the right to arrest and/or criminally or otherwise prosecute officers and members of a ship of British registry is not given.

As to the defendant Belanger, we move, in addition to the foregoing grounds, that there is no evidence of his knowledge of any of the acts testified to having been done and performed by the "Quadra."

That there is no evidence of his participation in any of the acts testified to having been done and performed by the "Quadra."

That there is no evidence of the defendant Belanger having knowledge of the performance of any illegal act by the "Quadra."

That there is no evidence that the defendant Belanger participated in any illegal act by the "Quadra."

That there is no evidence of defendant Belanger having knowledge and/or participation in any crime or conspiracy whatsoever.

That there is no evidence of defendant Belanger having knowledge and/or participation in the criminal offense set out or attempted to be set out in this indictment.

Now, if the Court will permit me, I wish, with great seriousness, to urge the proposition that this Court is without jurisdiction over the persons and the subject matter of the offense attempted to be alleged in this indictment. In doing so, I realize that the Court will receive it and give it the utmost weight, at the same time I realize that your

Honor is a lawyer, and has given this subject a great deal of thought, a great deal of attention, that you have already committed yourself as to your legal opinion—

(Rep. Tr., 360-363.) [264]

Mr. FAULKNER.—If the Court please, in indicating the grounds of the motion, I do not know whether I indicated that one of the grounds was that the evidence was insufficient to justify and/or support a verdict; if I did not, I ask that that might be considered as one of the grounds on behalf of each and all of the defendants.

(Rep. Tr., p. 373.)

Mr. FAULKNER.—My motion covers the master, officers and members of the crew of the "Quadra," who are the first 22 men in the indictment, my motion is primarily as to them. I also addressed a motion on behalf of the defendant Belanger.

(Rep. Tr., p. 378.)

Whereupon, after argument by the counsel for the Government and for the defendants and the Court, after setting forth his reasons, made the following ruling:

The COURT.—The motion, Gentlemen, will be denied.

Mr. FAULKNER.—Exception.

(Rep. Tr., p. 393.)

Mr. COGHLAN.—If your Honor please, the defendant Vincent Quartararo at this time desires to move to strike from the record and from the consideration of the jury, certain exhibits and cer-

tain testimony relating to and affecting exemplars of handwriting offered and admitted here, together with certain packages of United States one dollar bills that are before you. I believe, as nearly as I can gather from my notes, that this motion refers primarily to Exhibit 37, a photostatic copy of the articles of incorporation introduced here through the testimony of Mr. Milton M. Davis; I move that that be stricken from the record.

Exhibit 41, a photostatic copy of a receipt card of Vincent Quartararo at the Bank of Italy which came in under the testimony [265] of E. J. Casey, if I remember right.

Also exhibit 42, which I believe consists of certain checks, if I remember correctly, bearing a signature of a person named Vincent Quartararo; at any rate, it is exhibit 42, and they all bear upon the same subject.

And exhibits 39 and 40, and exhibits 38, 41, 33, 35, 36 and 31—these are all Government exhibits and they all relate to the matter to which I have called your Honor's attention. I say that so that I may intelligently refer to them.

The COURT.—Those are the different packages of bills, are they?

Mr. COGHLAN.—Yes, the different packages of bills. And also all the testimony of E. O. Heinrick offered here as an expert on handwriting affecting those exhibits. I offer that motion, your Honor, upon the ground that they have not been in any way identified with the transaction or transactions stated or pleaded in the indictment or with

the conspiracy therein described, or with any conspiracy whatsoever or with any violation of the National Prohibition Act, or the Tariff Act of 1922, or with the operations of the "Quadra," evidence of which was taken here, or of the "Malahat" or any of the motor-boats named in the evidence by the witnesses here or with the alleged operations of any of the witnesses who have testified, or that they were ever connected with or ever used at all on any of the criminal or alleged or claimed criminal operations contemplated by these proceedings, or that they were in any way connected with any transaction having to do with the conspiracy charged or the persons charged here in the indictment or with any other persons named as unknown, or with the events or things here testified to by the several witnesses who touched upon those matters, or that they themselves, meaning the bills furnish any evidence of an identity of operation, that is to say, furnish any evidence that [266] they were used in any of the operations claimed to have been criminal and here adverted to by witnesses or counsel, or that they give any evidence of belonging to any transaction having to do with any of the charges here set out in the indictment; and, furthermore, that they do give evidence upon their face, in connection with other things in the record, of having to do with other and distinct and separate transactions from anything which it is claimed transpired in connection with this conspiracy; and that they do not in any way form a bridge

or connection between Vincent Quartararo and the conspiracy here charged or attempted to be proved.

The COURT.—The motion is denied.

Mr. COGHLAN.—We reserve an exception. And now I want to adopt a motion that was made by Mr. Faulkner and to add to it the observations made in my objection; I move for an instructed verdict upon the ground that Vincent Quartararo has in no way been connected with the commission of the conspiracy set out in this indictment, or any offense punishable under this indictment.

The COURT.—Motion denied.

Mr. COGHLAN.—Exception.

(Rep. Tr., pp. 393–395.) [267]

TESTIMONY OF F. D. DEDRICK, FOR DEFENDANTS.

F. D. DEDRICK, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I live in San Francisco. I am at present manager of the California Sea Products Co. That company is engaged in the business of whaling. In connection with my duties as manager of the California Sea Products Co., I was on board the steamer "Traveler," one of our whalers, on Sunday, the 12th day of October, 1924. At daybreak on that day we were leaving Drakes Bay for the whaling grounds. We left at approximately 5:30 that morning. Drakes Bay is just inside of Point Reyes, that is, inside that promontory to the east.

(Testimony of F. D. Dedrick.)

It is the bay that is protected by Point Reyes, itself. I have the captain's pilot-house log here that will give the exact hour when we left. I hold a certificate as master mariner of vessels in this country. I have held that certificate since, I believe, 1892. I followed the sea up until 1908, as master of sailing vessels, mostly. When we left Drakes Bay that morning we proceeded to a point I should judge about five or six miles west of Point Reyes, and perhaps a little further than that; I really don't know the exact point. I am familiar with the United States Coast Guard cutter "Shawnee." She was around there that day when we were whaling, when we were chasing whales outside of Point Reyes. She was in Drakes Bay the night before. She was still in Drakes Bay when we left there in our whaler. She afterwards came out of Drakes Bay and was around where we were for a little while. It must have been about between half past six and seven o'clock in the morning when the "Shawnee" joined us where we were. She stayed around where we were for probably an hour or so. She then, as far as we could see, went off to the westward and out of our sight. I did not see her again on that day. From where [268] we were whaling we could see the North Farallone rocks. It was a nice, clear day, calm.

Mr. GREEN.—Q. Captain, from your position on the deck of the whaler on that morning, could you have seen a vessel at a point 5.7 miles west

(Testimony of F. D. Dedrick.)

magnetic from North Farallone Islands, or 2 points north of that position?

A. I think that the position we were would be about five or six miles due west of Point Reyes, and that would bring us north of the North Farallones, I don't know how many miles, but it would probably be six or seven miles of the North Farallones, wouldn't it?

Q. It would have brought you ten or twelve miles north of the North Farallones.

A. Well, I have never looked at the chart. I would certainly have been able to see a vessel that would have been six miles from our position due west.

WITNESS.—(Continuing.) I was scanning the horizon at that time for whales. We had a man in the crow's nest that morning and I was personally scanning the horizon myself. I did not see the steamer "Quadra" that morning. We got a whale somewhere I think around ten o'clock. This log-book, here, will show you the exact time. We towed that whale back into Drakes Bay and then we came back out there again. We came back out there again about two o'clock, between two and three. Then from ten o'clock to twelve we were in the bay, that is, from the time we started in to the bay and got back to Drakes Bay and until we got back out there again.

Mr. GREEN.—If the Court please, I have here a photographic enlargement of a portion of the chart that already has been introduced in evidence

(Testimony of F. D. Dedrick.)

as part of the Government's case. I understand there is no question on the part of the district attorney but that this is a photographic enlargement of the official chart. I, therefore, offer it in evidence as Defendants' Exhibit "A." [269]

(The chart was here marked Defendants' Exhibit "A.")

WITNESS.—(Continuing.) Referring to this chart, and indicating Point Reyes upon the chart, we were about six miles west of there while we were hunting whales that morning. By referring to the captain's pilot-house log, I can give you the different times. You know, I was not the navigating officer of the ship that day, I was there just as an observer for our own benefit. We got under way from Drakes Bay on Sunday, the 12th day of October, at 5:40 A. M. We had anchored there the night before at 7:40 P. M. 5:50 A. M. Bell Buoy west southwest 3 miles. 6:12 A. M. Point Reyes abeam. 6:30 began chase. That means that we found whales, two finbacks, two miles west of Point Reyes. 10:30 A. M. whale secured; under way. That means that we shot a whale in the meantime and secured it ready to tow it back. Point Reyes at that time was east 5 miles. That is where we got the whales.

Mr. GREEN.—Q. Marking a position on the chart as being 5 miles west of Point Reyes, marking that position with the letter "W," I will ask you, Captain, if, from your position at "W," at ten o'clock in the morning on the 12th day of Oc-

(Testimony of F. D. Dedrick.)

tober, 1924, could you have seen the "Quadra" at the position marked "Q" on the chart, if she had been there?

A. Well, how far is that—12 or 13 miles?

Q. Yes. A. No, she would be hull down.

Q. But could you see her stacks and masts?

A. What size ship is she—I never saw her, that I know of.

Q. Could you at that distance see a steamer 140 feet long, with one stack and two masts, and a sail set?

A. We might have seen the masts and the sails.

Q. Did you see any such vessel at that time?

A. No, sir.

On cross-examination, the witness testified as follows: [270]

We were out there for the purpose of getting whales, and that is what we were interested in. We sighted whales at 6:30 o'clock in the morning, and we picked up a whale at 10:00 o'clock. And it was 10:30 before we got our whale. We kept right after him until we got him and when we got him we made him fast and took him to Drakes Bay.

On redirect examination, the witness testified as follows:

We were not chasing one particular whale from 6:30 to 10:00 o'clock. We were chasing several whales, probably half a dozen. My attention was not directed all that time to any one particular whale.

TESTIMONY OF GEORGE HARRIS, FOR DEFENDANTS.

GEORGE HARRIS, a witness called on behalf of defendants, being first duly sworn, testified as follows:

My name is George Harris. I am one of the defendants in this case. On the 12th day of October, 1924, I was chief officer on the "Quadra." I live in Vancouver. I am a citizen of the British Empire, having been born in England. I hold a master mariner's certificate. That certificate was issued by the British Board of Trade. I obtained it in 1911, and I still have it.

Mr. GREEN.—I do not like to introduce this in evidence, may it please the Court, because it is a part of this witness' personal belongings, and I think he ought to retain it; I would, therefore, like to ask leave to read it into the record.

The COURT.—All right, Mr. Green.

Mr. GREEN.—(Reading.) "First copy. (Board of Trade.) By the Lords of the Committee of Privy Council for Trade. Certificate of Competency as Master of a foreign-going ship. To George William Harris,

"WHEREAS it has been reported to us that you have been found [271] duly qualified to fulfill the duties of Master of a foreign-going Ship in the Merchant Service, we do hereby, in pursuance of the Merchant Shipping Act, 1894, grant you this Certificate of Competency.

"BY ORDER OF THE BOARD OF TRADE, this 29th day of July, 1911.

(One of the
(Assist. Secretaries
WALTER J. HOWELL, (to the
(Board of Trade.

Countersigned,
HENRY M. MALAN,
Registrar General.

Registered at the Office of the Registrar General of Shipping and Seamen.

"In accordance with the provisions of Section 101 of the Merchant Shipping Act, 1894, I certify that this document is a copy of the Certificate to which by the record kept in pursuance of the Merchant Shipping Acts, the within-named George W. Harris, appears to be entitled.

"Dated this 15th day of November, 1916. C. R. Jones, Registrar General.

"General Register and Record Office of Shipping and Seamen. Tower Hill, London, E. E. G.

(Rubber stamp on right-hand corner: "Certified to have passed the Higher Form of Vision Test at W. Hartlepool on the 24th July, 1911. Henry N. Malan," and on the reverse side the following:

"Number 040,545.

"Address of Owner Kingsdown Cottage, Halton Road, Spilsby.

"Date and Place of Birth Eighteen hundred and eighty-six, Ingoldmells, Lincs.

"Signature, George William Harris.

"This Certificate is given upon an Ordinary Examination passed at West Hartlepool on the 24th day of July, 1911.

"Every person who makes, or procures to be made, or assists [272] in making any false Representation for the Purpose of obtaining for himself or for any other Person a Certificate either of Competency or Service, or who forges, assists in forging, or procures to be forged, or fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any such Certificate or any Official Copy of any such Certificate, or who fraudulently makes use of any such Certificate or any Copy of any such Certificate which is forged, altered, cancelled, suspended, or to which he is not justly entitled, or who fraudulently lends his Certificate to or allows the same to be used by any other person, shall for each offense be deemed guilty of a Misdemeanor, and may be summarily punished by imprisonment with or without hard labour for a period not exceeding Six Months, or by a penalty not exceeding £100, and any Master or Mate who fails to deliver up a Certificate which has been cancelled or suspended is liable to a penalty not exceeding £50.

"N. B. Any person other than the Owner thereof becoming possessed of this Certificate should transmit it forthwith to the Registrar General of Shipping and Seamen, London.

"Issued at the Port of South Shields on the 31st day of July, 1911. N. McLeod Dryden, Dy. Supt."

(Testimony of George Harris.)

(Stamp:) "M. M. Office South Shield 17 Nov., 1916."

WITNESS.—(Continuing.) After I received this certificate I continuously engaged myself as an officer of foreign-going ships under the British flag. I served in the capacity of chief officer. I have been all over the world. This time last year I was master of a foreign-going vessel, the "Canadian-Scottish." That was a vessel of 8,000 to 9,000 tons dead weight, carrying general cargo and a few passengers. We ran to Australia and New Zealand, Japan and China, and back to Vancouver. My certificate [273] has never been revoked, and I am still the entitled owner of it. I remember when the "Quadra" was seized by the United States coast guard cutter "Shawnee."

Mr. GREEN.—Q. Do you know the position of the "Quadra" at that time? A. Yes, sir.

Q. What was her position?

A. 37:49½ north, 123:22½ west.

Q. Where did that place her with respect to the North Farallones?

A. West of south magnetic 13½ miles.

Q. Referring to Defendants' Exhibit "A" in evidence, this chart, were these positions that have been worked upon this chart placed there under your direction? A. Yes, sir.

Q. How did you arrive at the position of the "Quadra" at the time that she was seized, and when?

A. I started to fix the position at half past

(Testimony of George Harris.)

eleven. That was the apparent time at the ship. I did that at that time at the request of Captain Ford. At that time the "Shawnee" was not very far away, just a bit on the starboard quarter.

Q. How did you fix this position?

A. I got a bearing of Point Reyes.

Q. How did you obtain that bearing?

A. I brought her right down to Point Reyes.

Q. Do you know what that bearing was?

A. Yes, sir, northeast half north magnetic.

Q. What did you do next?

A. I took an ex-meridian altitude of the sun.

Q. Did you work out your observations at that time?

A. No, I took other angles, first, before I worked it out; I got all my data first.

Q. What else did you do?

A. I took a vertical angle of Point Reyes.

Q. And what was that?

A. 16 minutes 45 seconds of arc. [274]

Q. What else did you do?

A. I took a horizontal angle of the South Farallone lighthouse and Point Reyes.

Q. Do you remember what the angle was?

A. Yes, sir, 54½ degrees.

Q. Did you take any other observation?

A. No, that was all.

WITNESS.—(Continuing.) After I took these observations I worked up our position. I have the original figures that I made at the time. This sheet of paper, dated at the top "October 12, 1924,"

(Testimony of George Harris.)

is in my handwriting, and the figures are all mine. The figures on this paper are my calculations; the first one is the vertical angle, the one below it is the ex-meridian altitude, and the other is the horizontal angle applied to the bearing. These figures were placed on this sheet by me immediately following the observations that I have already testified to.

Mr. GREEN.—I offer this sheet and the figures thereon in evidence and ask that it be marked Defendants' Exhibit "B."

(The paper was here marked Defendants' Exhibit "B.")

Mr. GREEN.—Q. Will you please point out the position of the "Quadra" as fixed by your vertical angle of Point Reyes that you have testified to—and I am now referring to the chart which has been offered in evidence.

A. Right here, where you have marked it with the letter "P."

Q. What does the line from that position to Point Reyes represent?

A. That is the line of bearing, the compass bearing, northeast half north, magnetic. It is marked, "Northeast half north, magnetic."

Q. What position upon this chart was fixed as the position of the "Quadra" by your horizontal angle of Point Reyes and South Farallone Lighthouse?

A. The horizontal angle in connection with the ex-meridian puts it there, a little bit to the north-

(Testimony of George Harris.)

ward, which position you have marked with the letter "X." [275]

Q. Will you explain how you took the vertical angle of Point Reyes?

A. I got the sextant out and put the telescope in and pointed it toward the Point Reyes hill and brought that down to the horizon where the water comes on the cliff, and then took the reading of the sextant. It was a very clear day and you could see the water line very clearly against the cliff.

Q. How did you take the horizontal angle of Point Reyes and the South Farallone light?

A. You hold your sextant horizontally and clamp it, that is, fix it at zero, and look at the South Farallone Lighthouse, and you bring the reflection of that lighthouse to Point Reyes, and then you take your reading of the sextant.

Q. How did you take the ex-meridian altitude of the sun?

A. I had my clock set at the apparent time at the ship and got my telescope in the collar, ready for taking, and brought the sun down to the horizon and looked at the time. I made it on the even minute, to save interpolating. At 11:44 I took the observation, I took the reading of the sextant. It was all ready for working out.

Q. In your experience as first officer on several ships covering the number of years you have heretofore testified to, were you acting as navigating officer?

A. I used to navigate. In the morning I used to

(Testimony of George Harris.)

take the stars, and at night-time the stars; but no other navigation. When I was second mate and third mate I used to work some problems in the daytime.

Q. How many ex-meridian altitudes of the sun have you taken in your experience, roughly?

A. Thousands of them.

Q. Do you consider it to be accidental if an ex-meridian altitude of the sun taken under the circumstances noted on the 12th day of October, 1924, on board the "Quadra" fixed your position within a mile of the position fixed by other observations, such [276] as bearings?

A. You can get the ex-meridian within a quarter of a mile.

Q. Have you ever done that in your experience?

A. Yes, sir.

WITNESS.—(Continuing.) I was employed by Captain Ford to act as first officer of the "Quadra" on the 9th day of September, 1924. I signed on for a voyage to Mexico and return. I signed on as per the ship's articles at that time.

Mr. GREEN.—Q. Were you ever informed by Captain Ford, or by anyone else, that there was any intention on his part or on the part of the vessel, or anyone controlling the same, to unladen part of the cargo anywhere but at the port of destination? A. No.

Q. What were your duties on board the "Quadra," Mr. Harris?

A. I was a watch keeper; I did a good part of

(Testimony of George Harris.)

the navigation of the ship; and, of course, as becomes a chief officer, I had the working of the crew, and I also did the doctoring.

Q. Under whose orders did you act at all times on board the "Quadra"? A. The Master.

WITNESS.—(Continuing.) At the time I went on board the "Quadra" I did not know any of the defendants in this case, outside of the officers and members of the vessel. I have only met them since this case started; I have met them in the courtroom, and I have seen some of them in Mr. Green's office. The "Quadra" arrived off the coast of San Francisco on September 16th. On the way down here, the condition of the "Quadra's" engines was such that she could not go full speed. I did not have charge of the fuel. She burned about three or four more tons than they ever thought she would. I heard the chief engineer worrying about the fuel all getting burned up; I heard him speaking to the captain about it. She used oil. When we arrived off the coast of San Francisco the oil was getting [277] pretty well used up. There was not sufficient fuel on board at that time to proceed to the destination of the vessel with safety—well, I don't think there was sufficient, because she was using too much up, her tanks were nearly all empty. We obtained further fuel on board the "Quadra" while the "Quadra" was lying off the coast of California, near San Francisco. I believe it was about three days before the capture that we took so much on

(Testimony of George Harris.)

board, and the day before the capture we took the balance. At the time of the capture this fuel was on the ship's deck; we were emptying it into tanks at the time, into the fuel tanks, the after fuel tanks. I saw the Crivellos here on the witness-stand; I cannot say that I recognized them at all. I *never McKenzie* and Pensotti until about two days after we were brought ashore. I do not recognize seeing Allen and Neilsen at sea, either. I never saw Mr. Quartararo before the "Quadra" was seized. I never saw Mr. Belanger before the "Quadra" was seized; I never knew him or I never heard of him. I never heard or knew of Mr. Quartararo before that time. I never saw him until we came into this court, here.

Mr. GREEN.—Q. Do you know whether or not liquor was unloaded over the side of the "Quadra" while she was lying outside of the Farallones?

A. Yes, sir.

Q. Did you have anything much to do with it?

A. Well, I worked the crew, do you see.

Q. Under whose direction?

A. The master's direction. The master would give me an order to fill a boat, and I would get the crew and give the order.

Q. When was the first time that any such orders were given to you on this voyage?

A. Well, I could not say whether it was the first day down, or the second day down, I could not say, because I have not any record of anything. [278]

(Testimony of George Harris.)

Q. By "down," do you mean after you reached this position outside the Farallones?

A. Yes, after the 16th, when we reached the parallel of the latitude of the Farallones?

Q. Now, Mr. Harris, as first officer of the "Quadra," and the officer who had charge of the most of the navigation, did you watch the position of the "Quadra" at all times?

A. All the time during my watch. I was all the time checking up the ship's position.

Q. Under whose direction?

A. The master's direction; that was his orders.

Q. Are you familiar with the drift of the current at that position?

A. I checked up ever since we came down. I checked up the current, the way the wind was, or anything like that.

Q. And you were there from the 16th of September until the 12th of October? A. Yes, sir.

Q. How many times during that time did you check the ship's position in order to determine what the prevailing set of the current was in that position?

A. We used to check up the ship's position about every two hours.

Q. What was the result of your observations regarding the set of the current in that position?

A. When there were westerly winds my observations showed that the general set is east southeast magnetic, after a heavy blow 3 knots per hour, and we had several heavy blows out there. About two

(Testimony of George Harris.)

days after a heavy blow you will have about one knot. With southeast winds, we experienced a set north to northeast magnetic, just until the blow had finished. We had one southeaster out there.

Q. Did that set, following such a wind, last very long? A. You mean southeasters?

Q. Yes.

A. It would last about a day and a half, I think.

Q. Do you know what the set was on the 12th day of October, [279] 1924? A. Yes, sir.

Q. What was it? A. East southeast, magnetic.

Q. About what rate?

A. About 1 to 1¼ knots.

Q. Did you check that on that day?

A. No, I didn't that day. I did up to midnight that night. The second officer took the next watch, and, of course, he checked up and reported no change.

Q. Mr. Harris, after you had worked out the observations that you took at the time you testified to heretofore, did you report the result of your observations to Captain Ford? A. Yes.

Q. Were the officers comprising part of the boarding crew from the "Shawnee" on board the "Quadra" at that time? A. No.

Q. They were not? A. No.

Q. Did they come aboard later?

A. Just a few minutes after.

Q. Did you have your position all worked out at the time that they came on board?

A. The position was plotted up on the chart.

(Testimony of George Harris.)

A. No, I left the forecastle-head when the tow-rope was made fast.

Q. Who made the tow-rope fast?

A. Not the ensign, the other officer, I don't know what they call him.

Q. The officer that you last designated, Mr. Patterson? A. Yes.

Q. Where did you go after the tow started?

A. I went in the captain's room, in his office.

Q. In the captain's office on the "Quadra"?

A. Yes.

Q. Did you leave anyone on the forecastle-head of the "Quadra"? A. Yes, I left one seaman.

Q. What was his name? A. Gisbourne.

Q. Did you leave Gisbourne there with any instructions? A. Yes.

Q. What were the instructions that you left with Mr. Gisbourne?

A. I instructed him to stand at the forepart of the foremast, where he could keep an eye on the "Shawnee" and let me know if anything unusual happened, anything out of the way.

Q. What time was it that the tow started?

A. 12:27, apparent time of the ship.

Q. Did you have a watch on your person showing that time? A. Yes.

Q. Did Gisbourne report to you later? A. Yes.

Q. At what time? A. At 2 o'clock.

Q. What did he report to you at that time?

A. That the "Shawnee" was taking a cast of the lead.

(Testimony of George Harris.)

Q. By "cast of the lead," you mean what?

A. Taking a sounding with the sounding machine.

Q. What did you do upon the receipt of that information from Mr. Gisbourne?

A. I went forward.

Q. What did you do after you arrived forward?

A. Looked to see for myself. [282]

Q. How did you look?

A. I looked with a binocular.

Q. What did you observe on board the "Shawnee"?

A. I saw the men around the sounding-machine and then heaving the lead in.

Q. What time was that? A. 2 P. M.

Q. Do you know this man McLennan, about whom there has been considerable testimony in this case? A. Yes.

Q. What was his position on board of the "Quadra"?

A. He was on the ship's articles as an able seaman.

Q. Did you treat him as such?

A. He was treated as such by me.

Q. Did you know him to be a supercargo?

A. No, he was on the articles and worked as an able seaman, and worked with the crew.

Q. He worked with the crew? A. Yes.

Q. Under whose direction?

A. Under my direction.

(Testimony of George Harris.)

Q. Did he ever perform the duties of a supercargo to your knowledge?

A. Not to my knowledge.

Q. Now, you testified that the tow started at 12:27. A. Yes.

Q. Apparent time at the ship? A. Yes.

Q. Do you know at what time Noonday Rock buoy was abeam? A. 2:27.

Q. How did you ascertain that?

A. The second officer and the captain had taken the bearing of the buoy.

Q. Where were you when the second officer and the captain took the bearing of Noonday Rock buoy abeam? A. I was down in the captain's office.

Q. Where were they?

A. They were on the bridge.

Q. Do you mean what time North Farallones Rock was abeam? A. Yes.

Q. What time was that?

A. 3:11 apparent time at the ship.

Q. Do you know what speed that showed the "Shawnee" was towing the "Quadra" at?

A. Yes.

Q. What speed was shown by that? A. 5:03.

The COURT.—Shown by what? By the fact that the Noonday [283] Rock was abeam at that time?

Mr. GREEN.—That Noonday Rock was abeam at a certain time, and North Farallone Rock was abeam at a certain time.

The COURT.—You are figuring back from what

(Testimony of George Harris.)

you claim was the position, and estimating your speed in that way, are you?

A. No, from the buoy abeam to the rock was so many minutes, and you figure the distance on the chart.

Mr. GREEN.—Q. Did you work that problem out at that time? A. Yes.

Q. Have you the original figures that you made at that time? A. Yes.

Q. Referring to this sheet of paper marked at the top "October 12, 1924," is it all in your handwriting? A. Yes, it is all in my handwriting.

Q. When was this written upon this sheet by you?

A. That day, during the afternoon.

Q. During the tow in?

A. Yes, I put down the time, you see, when we anchored; I put down on a sheet of paper, you see, when these things happened.

Q. What time, Mr. Harris, was Fort Point abeam? A. 9:30 apparent time at the ship.

Q. What time did you drop the anchor in San Francisco Bay?

A. 10:30 apparent time at the ship.

Mr. GREEN.—I offer this sheet of paper and the figures and computations thereon in evidence, and ask that it be admitted and appropriately marked as Defendants' exhibit.

(The sheet was marked Defendants' Exhibit "G.")

Q. Were you on watch the night before October 12, 1924? A. I was on watch till one A. M.

(Testimony of George Harris.)

Q. Who relieved you at that time, if anyone?

A. The second officer. [284]

Q. Mr. Evelyn? A. Yes.

Q. Did you keep a strict watch of the position of the "Quadra" during all of the time she was off the Farallones? A. Yes.

Q. What did you do in that regard?

A. Well, I kept taking cross-bearings when you could see the lights and searchlight, angles, or anything like that, observations, I took a few observations off there, a number of sights.

Q. Did you take bearings and observations to fix the position of the "Quadra" on every day that the "Quadra" was lying west of the Farallones?

A. Sometimes it was foggy and you could not.

Q. On all the days excepting those?

A. Excepting when we were at sea. Some days we were a long way out at sea, in bad weather.

Q. Was the steamer "Quadra" at any time on any day, when she was lying west of the Farallones, or off the coast of California, ever within twelve miles of any United States possession?

A. No, not to my knowledge.

Q. Not while you were on watch?

A. Not while I was on watch.

Q. Who kept the watches, Mr. Harris?

A. The second officer and I.

Q. You and Mr. Evelyn?

A. The captain sometimes would take a few hours for us.

(Testimony of George Harris.)

Q. Could you see the North Farallone Islands at the time that the "Shawnee" was alongside?

A. Yes.

Q. I suppose you have observed the Farallone Islands on many days while you were out there, have you not? A. Yes.

Q. In your opinion, how far away did they look?

A. They looked 14 miles away, every bit.

WITNESS.—(Continuing.) The way I came to be hired as chief officer of the "Quadra" on the 9th of September, 1924, in Vancouver, was that I heard that the "Quadra" wanted a chief [285] officer. I happened to be aboard of one of the Canadian Government steamers, seeking a friend of mine, the captain, and I heard that they wanted a chief officer on the "Quadra," so I went and asked for the job. I had been ashore then about five months. I am a married man; I have my wife and three children. I have followed the sea for 24 years.

On cross-examination, the witness testified as follows:

With reference to the figure 337 constant contained on the sheet of paper upon which I have set out my calculations, I got that figure out of the tables in the Nautical Almanac. That is what they call a natural cotangent. I identify the table from which I took that figure. Point Reyes is 5.97 miles. I used 337 between the two; that was the factor I used, 337. That represents the factor of the tables, the factor for working out one of these

(Testimony of George Harris.)

angles, a short method. It is a natural cotangent; instead of working the long method, it is a shorter method of getting it quick.

When I said that I had been ashore five months at the time I secured the position of chief officer on the "Quadra," I did not mean that I had been out of work all that time, I simply meant that I was ashore and out of a ship; I worked about three months of that time. I have sailed out of Vancouver about two and a half years, that is, I would be in Vancouver about a fortnight and away for six months on a voyage. I am not pretty well acquainted around the waterfront in Vancouver. I know very few people around Vancouver. I know the Canadian Government steamers, the company that I was in—the Canadian Government merchant marine. Besides those steamers, I have seen two or three of the C. P. R. steamers. I did not take much notice of the usual steamers that plied back and forth from Vancouver. While I was working ashore, I saw the "Quadra." At that time [286] she was laid up in Coal Harbor. That was the only time I ever saw the "Quadra," up to the time I shipped on her. She was not on any run at that time, she was laid up at that time. I do not know who owned her; I was never particularly interested in it; I never made any inquiry about it. I have seen the "Malahat" at different times anchored in Vancouver Harbor. I never saw her tied up to the dock. I didn't know what run she was on. I never heard of the "Oden." I never heard of the

(Testimony of George Harris.)

"Erskine." I have heard of the "Coal Harbor." I saw the "Coal Harbor" off at sea; that is the first time I ever saw her. I do not know Captain Hudson; I never met him before. I never met Captain Murray before. I cannot say that I ever heard of the "Jesse"; I read about her in the papers, that is all. I read in the papers that she was a sealer, that she was a sealing schooner at one time; that is all that I read about her. I did not read that she was a rum runner. I did not see anything in the paper to the effect that she was a rum runner to this coast.

Mr. GILLIS.—Q. Of course, you did not have the slightest idea that she might have been a rum runner when you saw her?

Mr. GREEN.—I object to that as immaterial, irrelevant and incompetent.

The COURT.—Overruled.

Mr. GREEN.—Exception.

A. No.

WITNESS.—(Continuing.) I never heard of the "Ironbark." I did hear of the "Kiltuish." I saw the "Kiltuish" off the coast, here. That is the first time. I had never seen her before. The only vessels that I knew anything about in the 2½ years that I was at the port of Vancouver were the Canadian Government merchant marine vessels that I was on, myself; that [287] is, the only ones I ever had anything to do with. That is the only ones I knew anything about. I heard of the C. P. R. boats. I do not know how many boats they have.

(Testimony of George Harris.)

I met Captain Ford the day before September 9th. I was introduced to the man, that was all; that was the first time I ever saw the man. Mr. Evelyn introduced me to him. Mr. Evelyn and I were shipmates in the Canadian Government merchant marine together three years, or two and a half years. I had not been talking to Mr. Evelyn a few days prior to that time. Mr. Evelyn did not tell me he was going on the "Quadra"; he said he was working by the ship that day. He did not tell me that he was the second officer of the "Quadra," and that Captain Ford was looking for a first officer, and that he would like me to get the job. I don't know that Evelyn said anything to me about Captain Ford wanting a chief officer. I don't remember anything he did say. I heard that Evelyn was going to ship on the "Quadra"; I heard it on the quay that Evelyn was there; I heard that when I was on the quay, alongside of the Government steamers; that was the morning before my introduction to Captain Ford. I did not know at that time that Evelyn was going on the "Quadra." I did not know that he was going on the "Quadra" until the day that I signed on. That was the day after he introduced me to Captain Ford. At the time of that introduction I did not have any conversation with Captain Ford and Mr. Evelyn. Evelyn just introduced me, and that is all; just passed the time of day. Captain Ford did not tell me at that time that he was looking for a chief officer. I think that that conversation was some-

(Testimony of George Harris.)

where about just before noon. Captain Ford did not tell me how long he had been in port; he did not say what ship he had been on. I met Captain Ford the next afternoon at three o'clock. I had been down aboard the Government steamer again and I walked along the quay. I met [288] Captain Ford at the gangway of the "Quadra." I was not down on the quay to find Captain Ford; I just walked along the quay and I met him again. He did not stop me, I just spoke to him. I said, "Do you want a chief officer?" He said, "Yes." I signed on then. I signed the papers aboard the ship. That was on the 9th. The ship was finished loading then. There were oil barrels on deck. The hatches were on. I never looked to see any of the cargo at that time. I did not ask Captain Ford where the vessel was bound for, I just signed the articles for Mexico and return. I just walked in and he presented the articles to me, and I sat at the table and signed them. I did not have any conversation with him at all. I did not ask him who his second officer was. He told me the ship would sail at seven o'clock in the morning, and I had to get clothes, so I went ashore. The only conversation I had with him when I met him at the gangplank was, I asked him if he wanted a chief officer, and he said yes, and walked up the gangplank into his office, and he presented the articles to me, and I signed them. Then I found out what time the vessel was going to sail, and I left to get my clothes. That was the only conver-

(Testimony of George Harris.)

sation I had with him at that time. I brought my clothes down at nine o'clock at night. I did not stay aboard then, I went back home. I came back to the boat at one o'clock in the morning and turned in. We left the pier at about ten o'clock in the morning, I think. We went out of the harbor and went to sea.

Mr. GILLIS.—Q. Did you stop between the time you left the pier and the time you arrived off the coast of San Francisco?

A. Yes.

Q. When and where?

A. We were stopped in the Straits, but I can't remember what time. [289]

Q. You stopped in the Straits? A. Yes.

Q. How long did you stop there?

A. A few hours, I do not remember exactly the number, because I was turned in, it was during my watch below.

Q. What did you stop in the Straits for?

A. Just stopped there to get the oil barrels and everything lashed, and such like, the boat was not fit to proceed out into the ocean.

Q. That is the only reason you stopped?

A. Yes.

Q. Did you meet any Canadian cutter there?

A. No.

Q. Did you see any Canadian cutter going near you? A. No.

Q. Did you see a Canadian revenue cutter of any kind from the time you left the pier until you arrived off the port of San Francisco?

(Testimony of George Harris.)

A. I can't remember of seeing any.

Q. Did you meet the "Kiltuish" out there?

A. No.

Q. Did you meet the "Coal Harbour"?

A. No.

Q. Did you meet any vessels that you communicated with? A. No.

Q. When was the first time that you learned that there was liquor on board the boat?

A. I could not help but see the liquor when I was walking along the deck to my room, I could smell it.

Q. You could smell it? A. Yes.

Q. You smelled it when you went on the boat, too, didn't you? A. No.

Q. Did not?

A. The hatches were battened down when I went on the boat, but I noticed the smell of it over night.

Q. When did you see Evelyn after you went aboard the ship?

A. I saw Evelyn at nine o'clock.

Q. In the morning? A. At night.

Q. Was that the first time you knew he was shipping on the boat? A. I don't know.

Q. Well, now, think a minute.

A. I knew he must be going on the ship. [290]

Q. Was that the first time that you knew Evelyn was shipping on the boat?

A. That was the first time during the day.

Q. Was that the first time that you knew that Evelyn was shipping on the boat?

(Testimony of George Harris.)

A. I knew Evelyn was shipping on the boat when I signed the articles.

Q. When you signed the articles?

A. Because I had seen his name on the articles.

Q. Did you ask the captain who that particular individual was? A. No.

Q. If he was the same man you knew?

A. No.

Q. Was that the first time you saw Evelyn after he introduced you to Captain Ford?

A. The first time that afternoon, yes.

Q. He introduced you to Captain Ford before you signed on?

A. He introduced me to Captain Ford that morning before.

Q. The morning before you signed on?

A. Yes.

Q. When was the next time that you saw Mr. Evelyn?

A. After I had signed the articles.

Q. How long after?

A. I saw him when I was going ashore.

Q. Where was he? A. Standing on the deck.

Q. He was on the deck? A. Yes.

Q. He was on the boat, then? A. Yes.

Q. You did not see him when you went on?

A. No.

Q. Did you stop and have a talk with him?

A. No.

Q. No talk, at all? A. No.

Q. You had known him for how long?

(Testimony of George Harris.)

A. About the first time I met Evelyn would be two and a half years ago.

Q. Pretty good friends?

A. Not pretty good friends, at all; I knew the man; I was chief officer of the ship and he was third officer.

Q. That made you pretty good friends, didn't it?

A. You are not bound to be good friends; he left the ship shortly after [291] and I stopped on the vessel.

Q. You had no real friendship for him?

A. No particular friendship for him, any more than ordinary.

Q. Didn't you think it was a little out of the ordinary or exceptional that you should be shipping on the same boat with him again?

A. No. I have been shipmates with men over and over again.

Q. Certainly, but that is the only time, except once, that you shipped with this man?

A. Yes, I couldn't help that he happened to be on board another ship I came down to.

Q. You did not think it was exceptional, at all?

A. No.

WITNESS.—(Continuing.) We left Vancouver on the 10th and I do not remember seeing the "Kiltuish" in the Straits. I was standing two watches; every four hours, four on and four off. I don't remember what time I went to bed that night, and I forget what watch I had. I don't remember seeing the "Kiltuish" alongside of us.

(Testimony of George Harris.)

I would know if our vessel was stopped. I would not know, when I was turned in, if another vessel tied up alongside. If I were in my bunk, I would not know that a vessel tied up alongside of us and transferred things. I haven't any idea as to what time I went to bed that night, and I don't remember what watch I was on. I don't remember the vessel "Odena" tying up alongside of us that night. I don't remember that the "Odena" transferred 500 cases of Chinese wines to the "Quadra" that night. I had charge of the crew and would give orders to the crew if I was on deck. When I got up the next morning I did not see any more cargo aboard than when we started out. We were pretty well filled up when we started out, she was filled clear up; we had little or no room for any other cargo. In fact, it was so full that we had barrels on top of the decks. If there had been 500 cases of Chinese wines put aboard I [292] would have known it. There was no Chinese wine put aboard. There was no Chinese wine transferred that night. I am positive of that. The hatches were battened down when we left Vancouver, but they were not sealed. The crew worked on the cargo on the way down from Vancouver; they were shifting it about and sacking. They were taking the bottles out of the wooden cases and putting the bottles in a sack, a case in a sack; I guess a case is twelve. I can't remember what day we started sacking, because it was bad weather part of the time and we could not get the

(Testimony of George Harris.)

hatches off. We did not start sacking practically after we left Vancouver, but it was very shortly after, after we got out to sea. That was not the only work we did. There was other work to do on the ship. We had to get the life-boats and things in order, and the like of that. The ship had been laid up for a while, and the life-boats had to be put in good order. I could see the ship, she laid off there from where I was working at the Pacific Salvage Co. wharf; it was about a quarter of a mile off from that wharf. My curiosity was not aroused as to the boat laid up out there, I could not read her name from that distance; there were two or three old wrecks laying up there. When I saw the "Quadra," she looked to me like the vessel that I had seen laid up there about a quarter of a mile off from the Pacific Salvage Co. wharf.

When we came down here off Point Reyes I saw the "Malahat." I think that was the first day we came down, but I am not sure as to that. I can't remember whether we were sacking that day, or not. I think it was about six o'clock when we saw the "Malahat" and we had not yet started the work of the day. The wooden cases that we emptied were burned. I can't remember what day it was after we arrived here that the first small [293] motor-boat came alongside; it might have been the second day after we arrived off here. I don't remember what boat that was. I never looked at the name of any one of them. I never

(Testimony of George Harris.)

looked at the names of any of them at all. I was not interested in the names, because I did not want to know the names. I don't know why we were sacking all of this cargo as we came down. I did not inquire of anyone why all of this sacking was being done. I did not ask Captain Ford. I just received an order from Captain Ford to sack the liquor. As far as I knew, the vessel was going to Mexico. And as far as I knew until we got down to the Golden Gate I believed that we were still going to Mexico. I did not know why all the sacking was done, I never made any inquiry. All these wooden cases were burned in the furnace of the ship. The ship is an oil burner, but by taking one of these burners out they could burn these wooden cases. I don't know whether it is quite a job to take a burner out, or not; I don't know anything about the boilers, or engines, or anything down in the stoke hold. I know they were burned in the furnace.

When the first boat came alongside I stood on deck and gave the orders to load. I don't remember of picking any of the stuff out at all; the captain gave the orders for the liquor, and tended to it. I did not pick any stuff out. I was standing on deck. I did not give a hand, or anything like that. I was in charge of the work of the crew. I would say, "Go and get the stuff"—the captain would give me instructions what to get, and I would say, "Well, it is down there, go and get it." The captain never gave me a list of anything. He said so much of each kind of liquor.

(Testimony of George Harris.)

The captain personally supervised all the loading of these small boats. I worked directly under the captain's orders. When the captain said to load 100 sacks of Corby, I would simply tell the crew to get 100 sacks of Corby [294] on the small boat, I would pass the word along that had come from the captain, that is, if I was on deck. The sailors worked the winches. I never worked them. To the best of my knowledge I never saw Captain Ford working them. There were several small boats came out.

When we first came down here we took a position about 30 miles off the Farallones. We took a position right out to sea, straight out west. We did not remain constantly in that position, we came in to within about fifteen miles off the Farallones. We saw the "Malahat" the first day we came down. We lost sight of her because we had foggy weather after that time. While we were tied up alongside of her we put some empty barrels on her, and such like. At that time we brought from the "Malahat" over to the "Quadra" barrels of bourbon; it must have been bourbon, I don't know, I did not taste it, but that is what it was supposed to be, bourbon whiskey. While we were tied up alongside the "Malahat" we broke our bowsprit. We did not tie up alongside of her after that, because there was too much swell. I do not know whether the "Malahat" was unloaded at that time, because I did not go aboard her to have a look. I did not hear anything said about it at all, I did not ask, and no one told me. I

(Testimony of George Harris.)

could see that she was loaded light, but then a cargo of booze is not a dead-weight cargo. I did not hear any talk between Captain Murray and Captain Ford while they were tied up there. I know we went alongside of the "Malahat" and put drums aboard, and such as that. Captain Ford was doing the navigating at that time, and put the ship alongside. I was handling the ropes. I had nothing to do with the navigation of the ship at that particular time. There were some cases of wine and some bourbon barrels that were transferred from the "Quadra" to the "Malahat" in a small [295] boat. I could not say that there was one boat in particular that did all that work. I was directing the work on board our ship, and not in the boat that was coming alongside. I saw the stuff being transferred, but I did not take any notice of what boat it was; I did not pay any attention to that, at all, and I cannot remember of ever hearing anyone say what boat it was. McLennan was working with the crew all this time, he was working under my direction. I can't remember hearing the word "Marconi" mentioned in any manner; I might have, but I don't remember it. I might have heard it a number of times, but I don't remember of hearing it. I know there were boats coming and leaving, but I did not look at the names, myself. I do not know how many loads the small boat brought from the "Malahat." She did not bring any fuel, none whatever. All she did was to transfer the empty fuel barrels

(Testimony of George Harris.)

from the "Quadra" to the "Malahat." I cannot remember any names or numbers like the "C–731." I don't remember any boats that came alongside. I know there were several boats, and that I did not look at the names of the boats. I saw the "Coal Harbour" while we were out there. She did not tie up alongside of us. She transferred some cases of liquor to us. She sailed for home I guess it would be about a couple of days before we were captured, as near as I can remember. I could not say it was five days before; it was a couple of days, as near as I can remember that I did not see her off there, but I don't know what date she sailed. I had no conversation with anybody aboard that ship. I had no talk with anyone on that ship, she was too far away. She transferred cargo to us by means of the "Coal Harbour's" life-boats. I think the "Malahat" went home before the "Coal Harbour" did. I have forgotten now how long before, but it would be before; I never kept any notes of anything. [296] I can't remember what day she sailed for home. I saw the "Kiltuish" down here; she was alongside of us. She did not transfer any liquor to us, and we did not transfer anything to her. We were taking oil from the "Kiltuish." I could not say how much we took; she was loaded with oil, and we took a load, whatever it was. She was our supply boat. We got so much of it about a couple of days before we were captured, or perhaps three days before, I would not say, because there was a gale of wind came on

(Testimony of George Harris.)

in the meantime and there was too much sea to lay alongside, and we took the balance aboard the day before capture. It was a northwesterly gale. I cannot say we took oil from the "Kiltuish" on the day the "Coal Harbour" sailed for home, for I don't know what day the "Coal Harbour" sailed for home. I say that we took so many barrels off the "Kiltuish" about two or three days before we were captured, and that is as near as I can remember.

On the way down from Vancouver we had our log over part of the time; I cannot say we did all the time. I do not know what the distance was; I should judge somewhere around 1200 miles, as near as I can give it—1200 miles, I should say. That means nautical miles. I had never been on that run before, I had always been across the ocean. All of my runs prior to that time had been on the ocean, all deep sea work; that is, since I have been *out Canada;* yes, I have been in the Canadian Government merchant marine running to Australia and New Zealand, and then on the oriental run. I could not say how much oil we used coming down from Flattery. I have nothing to do with the oil. I know we had a shortage of oil. The only thing I have to do with the oil is to get it on board. I don't know how much oil that boat should use, only by hearsay. The only way I know that there was a shortage of oil was [297] from the conversation between the captain and the chief engineer. I could not say how much

(Testimony of George Harris.)

we had on board when we arrived off the port of San Francisco. I did not sound any tanks. I do not know how many barrels of oil we had, I did not take any tally of them. As near as I could say, the vessel could not go to Mexico with what oil was left when we arrived off San Francisco. The statement that I made on my direct examination, the direct statement that the vessel could not proceed to her destination because of the shortage of oil, is as I understood it; that is based entirely on hearsay. The chief officer of the ship is not supposed to look after the oil. If the report of the chief engineer to the captain should show that we used about 168 barrels of oil from Flattery down here, I could not say whether that is correct, or not; I never inquired into that. I would not bother with the engineer's work. Of my own knowledge, I do not know whether there was a shortage of oil, or not. I only know by hearsay. From Flattery down, the "Quadra" made a speed of about 170 miles a day, 170 to 175, nautical miles.

Mr. GILLIS.—Q. Now, you say that 337 feet is constant.

A. Yes, constant for the height. It is not feet, it is just 337.

Q. How far were you from the water when you took that vertical angle? A. Twenty feet.

Q. Where were you, on the bridge? A. Yes.

Q. I believe you said your angle was 16–45?

A. 16 minutes, 45 seconds.

Q. You have studied, of course, navigation?

(Testimony of George Harris.)

A. Yes.

Q. Had to in order to get your master's certificate? A. Yes.

Q. Did you ever study Raper? A. No.

Q. Did you ever hear of Raper?

A. Yes, Raper's tables. [298]

Q. Ever see them? A. No.

Q. That is an English publication, is it not?

A. Oh, it is an English publication, but Nories is the particular one you use.

Q. From what you know of Raper's work, it is one of the recognized works on navigation, is it not? A. It is a recognized work.

Q. I would like to call your attention to Table 9 on page 539 of Raper? A. Yes.

Q. That table indicates the number of feet subtended by an angle of one minute at a certain distance of miles: Isn't that correct? A. Yes.

Q. Now you say you were about twenty miles from Point Reyes? A. Yes.

Q. And you were about twenty feet above the water? A. Yes.

Q. If twenty feet above the water, approximately how much closer to the object would that bring you? A. Not much.

Q. About 5.2 miles? A. No, I do not think so.

Q. How much closer do you say it would bring you?

A. I never worked it out that way. I just took the angle and did it as it shows in that table.

Q. Answer the question; how much closer would it bring you?

(Testimony of George Harris.)

A. It would not bring you any closer.

Q. Are you acquainted with Bowditch?

A. No, I have never seen that book.

Q. You have never seen the book? A. No.

Q. And you don't know anything about it?

A. No; it is not an English publication.

Q. No, it is an American publication?

A. I have never seen it before.

Q. Put out by the Naval Department?

A. Yes.

Q. Calling your attention to Table 6 on page 640 of Bowditch; [299] at the height of 20 feet above the water would give you a distance of visibility of 5.1 miles additional, would it not?

A. Yes.

Q. You would not be inclined to dispute that, would you, Mr. Harris? A. No.

Q. You would figure that this table of Bowditch, an authorized publication by the Naval Department was a correct publication and a correct table, would you not? A. Yes.

Q. Calling your attention to Nories, that you have shown me on page 131, table 20, that says: At a height of 20 feet above the water would give you an additional observation of 5.1 miles, would it not? A. Yes.

Q. So that that would bring you closer to an object by five miles, wouldn't it?

A. I do not say it would, with the problem as worked there.

Q. It would increase your visibility that much, would it not?

(Testimony of George Harris.)

A. It would not make much difference in the looks of the land.

Q. As a mathematical fact, wouldn't it increase your visibility that much?

A. I do not think so.

Q. Do not the tables say that?

A. I do not think that would affect that problem.

Q. Let us forget the problem; let us not think about the problem at all, and just confine ourselves to that. It would increase your visibility about 5.1 miles, according to the table of Nories and Bowditch, would it not?

A. It says so there.

Q. Then that would bring your distance down to 15 miles, would it not?

A. Oh, no, it would not, not with working it up like that.

Q. You say it would not?

A. I would say it would not.

Q. What would it do?

A. I do not see it would make any difference at all.

Q. It would not be any different at all?

A. No. [300]

Q. You would say, then, that the visibility at 20 feet above the water and on the water was the same?

A. It would not affect the angle.

Q. Let us not talk about angles; let us talk about visibility of an object. How high is Point Reyes? A. 597 feet.

(Testimony of George Harris.)

Q. At a distance of 20 miles how much of Point Reyes will be below the horizon?

The COURT.—38 feet for an angle of one minute?

Mr. GILLIS.—An angle of one minute would be 35.38 feet Have you got the result?

A. Yes.

Q. What is the result? A. 592.

Q. How much? A. 592. You said 35.38.

Q. 35.38 multiplied by sixteen and three-quarters. A. That gives 592.

Q. Check your figures.

Mr. RIORDAN.—What does your Honor make it?

The COURT.—I am not on the witness-stand.

A. That is all I get it.

Mr. GILLIS.—Q. 592?

A. 592; 35.38 multiplied by 16.75.

Mr. GILLIS.—I ask that that be introduced in evidence and marked Government's exhibit next in order.

(The document was marked U. S. Exhibit 55.)

Q. The result 592 is the height which subtends the angle of 16 minutes and 45 seconds at a distance of 20 miles: Is that not correct? A. Yes.

Q. How far is an object visible at sea?

A. I would say about 10 miles.

Q. Taking the surf-line.

A. I would not say you could see the surf-line 10 miles.

(Testimony of George Harris.)

Q. Take the surf-line, how far is that visible at sea? A. About five miles.

Q. About five miles? A. Yes. [301]

Q. Is that at the sea level, or 20 feet high above the sea level? A. About sea level, I should think.

Q. Then after five miles an object on the shore line will commence to drop below the horizon, will it not? A. Yes.

Q. And the further distant you get from that object the more rapidly it drops: Is that true?

A. Yes.

Q. So that if an object is 597 feet high and you view it at a distance of 20 miles there will be a portion of that that will be below the horizon, will there not? A. Yes.

Q. Will there be more than 5 feet?

A. I could not say.

Q. You could not say if there would be more than 5 feet below the horizon at a distance of 20 miles?

A. I could not tell you how much there would be, there would be so much below.

Q. Would there be more than 5 feet?

A. I could not say.

Q. You don't know. How long have you traveled the seas? A. About 24 years.

Q. Now, as a matter of fact, don't you know that there would be at least 170 feet below the horizon at that time?

A. I never worket the thing out before.

Q. Could you work it out with your tables?

(Testimony of George Harris.)

A. I say I have never worked it out before.

Q. That is not what I asked you. Can you work it out with your tables? Can you?

A. I do not think so.

Q. You do not think so. Try.

A. No, I do not know how to work it out.

Q. You don't know how to work it out?

A. I never worked it out.

Q. All right; if you don't know how to work it out, that is all right; that is all I want to know. But you do know that there would be more than 5 feet below the horizon at a distance of five miles, don't you?

A. I don't know, I never worked the [302] thing out. As I say, there would be so much below.

Q. From your experience of 24 years on the sea, will you now say that you do not know and cannot tell whether or not there will be more than 5 feet below the horizon at a distance of 20 miles?

A. More than 5 feet?

Q. Yes. A. Certainly there will be at 25.

Q. Now, how much, approximately? Your best judgment is all I want.

A. I should say about one-third of it.

Q. About one-third of it? A. Yes.

Q. That would be approximately, then, noting Point Reyes 200 feet, wouldn't it? A. Yes.

Q. Now, you cannot take a vertical angle on an object a part of which is below the horizon, can you? A. Yes.

(Testimony of George Harris.)

Q. You can only take the angle on that part of it that is above the horizon?

A. You can bring the summit of the hill down to the horizon, when the water hits the cliff.

Q. Assuming that a height of 20 feet above the water will give you an additional visibility of five miles, reducing your 20 miles therefore to 15, will you take the paper and work out, according to the Table 9 of Raper, on page 539, the height that would subtend your angle of 16 minutes 45 seconds at 15 miles, the table showing that at 15 miles 26.53 feet subtends an angle of one minute.

A. I have never worked it out that way.

Q. Will you work the problem out? You have got 26.53 feet subtending an angle of 1 minute, of 15 miles. That would be multiplying that by 16¾, wouldn't it? A. Yes. It is 444.

Mr. GILLIS.—I ask that that sheet be introduced in evidence and marked Government's exhibit next in order.

(The sheet was marked U. S. Exhibit 56.)

Q. This table that you have in front of Raper's, from which you took the constant at 337, where was that taken from. [303]

A. From the Nautical Almanac.

Q. That constant in that book would be constant whether you were five miles or twenty-five miles: Is that correct? A. I beg your pardon.

Q. That constant that you used, 337, would be the same whether you were 20, or 25 miles, or 5 miles, that is, the constant for the height of the

(Testimony of George Harris.)

hill? You would use that same constant in working from any of those distances? A. Yes.

Q. Regardless of how far or how close you were?

A. Yes.

Q. Or how much of the object that you were taking the angle of you could see? A. Yes.

Q. What was the first bearing or angle that you took on the morning of October 12?

A. The first bearing?

Q. Yes, the first of any observations that you made. A. The bearing at Point Reyes.

Q. That vertical angle?

A. No, the bearing at Point Reyes.

Q. The night before, you were on the 8 to 12 watch?

A. I was on from about 8 o'clock to 1 o'clock in the morning.

Q. You stretched your watch an hour?

A. Yes.

Q. Where was the ship that morning?

A. At what time, at one o'clock?

Q. Say at one o'clock.

A. She would be around 15 miles off the Farallones.

Q. In which direction?

A. To the westward.

Q. Approximately due west?

A. About west magnetic.

WITNESS.—(Continuing.) On Sunday, October 12 I got up about eight o'clock in the morning and went on duty down in the hold, trimming

(Testimony of George Harris.)

cargo. They might have sacked a little liquor, but I was employed with some of the crew trimming cargo that morning. I was down there all morning, until about 11:25 or 11:30. I could hear the engines just before 11:30, before I came out of [304] the hold. They might have been moving once or twice during the morning. They did move during the morning, but I could not tell the exact time. I guess, as the engines were moved that morning, we shifted our position about a mile. The captain was doing the navigating off the Farallones. So between 8:00 o'clock and 11:25 I took no bearings, no sights of any kind, nothing until I came on the bridge. I came up out of the hold because somebody shouted down the hatch there was a cutter around. When I came up the captain was on the bridge. No one else was on the bridge. No one was at the wheel, so far as I remember. The boat was headed about north at that time, something like that, as far as I can remember. I can't remember how she was headed when I got up in the morning; I never went on the bridge in the morning, so that I could not tell you. When I came up out of the hold I saw the "Shawnee" on our port quarter. I don't know whether she was coming through the water then, or not, I never took that much notice. I don't remember whether I heard the whistle of the "Shawnee." I heard the "Shawnee" fire a shot. I was on the bridge when the shot was fired, I think. I could not say how long it was I was up on the bridge, I can't re-

(Testimony of George Harris.)

member exactly how long I had been there, I did not take any time just then. I was not looking at the "Shawnee" when the shot was fired. I was on the starboard side of the bridge, and I walked through the wheel-house on to the port side. When the "Shawnee" was on our starboard quarter, she was headed north. If I said "port quarter," I intended to say "starboard quarter." She was about four or five ship lengths away. I did not see the "Shawnee" come around our stern and come up to our port quarter and stop; I did not stand and look at the vessel. I had been on the bridge three, or four, or five minutes. I did not recognize [305] the "Shawnee," I had never seen her before. Somebody said it was a cutter, but whether it was a cutter, or not, I did not know. I was not interested to find out. I did go and talk to the captain. He stood by the wheel-house door, port side. I could not exactly remember where I stood on the bridge all that length of time, but I was talking to him. That was quite an important time. Captain Ford said it was a revenue cutter. The "Shawnee" was right astern, I guess, then, more than three ship-lengths away. We were still headed north magnetic, as near as I can remember.

Mr. GILLIS.—Q. Did the captain say anything to you, Captain Ford? A. Yes.

Q. Did he tell you to take some bearing?

A. He told me to fix the ship's position.

Q. To fix the ship's position? A. Yes.

Q. Did he say that he had taken any bearings?

(Testimony of George Harris.)

A. He said he had fixed the ship's position at somewhere in the vicinity of 11:00 o'clock, or 11:10, something like that.

Q. That he had? A. Yes.

Q. Did he tell you how he fixed it?

A. With cross-bearings.

Q. He said he had taken cross-bearings?

A. Yes.

Q. That would be by compass, of course?

A. By compass.

Q. Did he say he had fixed it in any other manner? A. No.

Q. Did he say he had taken any horizontal angles? A. No.

Q. Did he say he had taken any vertical angles?

A. No, he did not tell me.

Q. He just said he had fixed his position at 11 o'clock?

A. About 11 o'clock, or 11:10, something like that.

Q. 11 or 10? A. No, I said 11 or 11:10.

Q. By cross-bearings? A. Yes.

Q. Did you then proceed to take your vertical angle of Point [306] Reyes? A. No.

Q. How long after that did you?

A. I took the vertical angle at the ex-meridian.

Q. Then it was not the vertical angle that you reached first? A. No.

Q. It was the ex-meridian? A. Yes.

Q. Before you took your ex-meridian, had you taken any bearings? A. Yes.

(Testimony of George Harris.)

Q. What? A. Point Reyes.

Q. Had you taken any sights or angles?

A. Not before then.

Q. How long before you took the ex-meridian had you taken a bearing on Point Reyes?

A. About 14 minutes.

Q. How long was it after you came up from the hold of the ship that you got that bearing?

A. I got the bearing three minutes after I had been on the bridge.

Q. Where was the "Shawnee"? A. Astern.

Q. Right astern?

A. I did not say "right astern." I said astern. I did not take much notice, because I was talking to the captain.

Q. Did the captain tell you why you should fix the position of the ship at that time?

A. No; he told me to fix the ship's position.

Q. Did he just leave it to you as to how you should fix it?

A. Yes, he just said, "Fix the ship's position."

Q. Did you believe at that time the "Shawnee" was a Government boat?

A. Well, I did not have much time to take stock of anything.

Q. You are only asked if you believed it was a Government cutter.

A. Somebody said there was a cutter there. I guess I took it for granted it was a cutter.

Q. Which way was the "Quadra" headed at that time? A. About north. [307]

(Testimony of George Harris.)

Q. Had she been in motion prior to that time?

A. She had way; there was way on the ship when I came on the bridge.

Q. She was under way when you came on to the bridge?

A. The vessel had way upon her when I came on to the bridge.

Q. Very much? A. A little.

Q. What rate would you say?

A. I don't know; she had good steerage way.

Q. I believe you said that there was no one at the wheel at that time. A. No, there was no one.

Q. You saw Captain Ford on the bridge, or in the wheel-house?

A. He stood by the wheel-house door.

Q. On the starboard side?

A. Yes. I came up the port ladder and he stood there, and we walked right over to the starboard side.

Q. You came up the port side and then you walked through the wheel-house to the starboard side of the wheel-house? A. Yes.

Q. Where did he go after he told you to fix the position of the ship? A. I did not look.

Q. Haven't you any idea about it? A. No.

Q. Not the slightest in the world? A. No.

Q. The first thing that you did was to take a bearing, to get a bearing on Point Reyes?

A. Yes.

Q. A head-on bearing? A. Yes.

Q. Did you give any signals to the engine-room?

(Testimony of George Harris.)

A. No, the vessel had way on her. I did not give them any signals at all.

Q. Anyone else in the wheel-house? A. No.

Q. Just yourself? A. Yes.

Q. What did you do to get the bearing?

A. I put the helm hard aport.

Q. You took the wheel yourself?

A. Yes, I threw it hard aport.

Q. You threw it hard aport?

A. Yes. [308]

Q. That brought the head of the vessel on to Point Reyes, did it? A. Yes.

Q. Were you behind the wheel, then? A. Yes.

Q. When you were behind the wheel, you noticed the compass? A. Yes.

Q. That is how you got that bearing? A. Yes.

Q. Is the wheel directly in the center of the ship?

A. Yes, the wheel is right in the middle of the ship, right behind the compass.

Q. Behind the compass? A. Yes.

Q. When you are behind the compass, which direction do you mean?

A. The after part of the compass.

Q. And is that directly in the center of the ship?

A. Yes, the binnacle is in the center of the ship, and the wheel is right behind it, as far as I remember it.

Q. Is the compass right directly in the center of the ship? A. Yes.

Q. Was there anything that obstructed your view from taking a head-on bearing?

319

(Testimony of George Harris.)

A. I don't know.

Q. Don't you know? A. No.

Q. Couldn't you see that day, when you took that head-on bearing, whether or not there was something directly in your view? A. No.

Q. Hasn't that ship any masts?

A. Yes, it has a mast.

Q. A mast on the forward deck? A. Yes.

Q. Directly in the center of the ship, is it not?

A. Yes.

Q. Is there a sight vane on the compass?

A. No, there is no sight vane.

Q. Did you just get the bearing from the eye?

A. Yes.

Q. You have to look around the mast in order to tell whether you are head-on, don't you?

A. How could I look around the mast?

Q. You had to look around it, didn't you?

A. No. [309]

Q. If you stood directly in the center of the ship and looked out through the window and got your view directly on Point Reyes, you would be looking right through the mast?

A. If you have got the mast in line with it, that would not make more than a degree's difference.

Q. In order to get the ship head-on, there would have to be a line drawn over the wheel, the compass, the mast, the bow, and Point Reyes, wouldn't there? If it was directly head-on, isn't that so?

A. If you stand right behind the mast and look ahead you can get a head-on bearing.

(Testimony of George Harris.)

Q. Just answer my question: If you have got a direct head-on bearing there would be a line drawn from the center of the wheel, from the compass, through the mast, through the bow, to Point Reyes?

A. Yes.

Q. That is correct, is it not? A. Yes.

Q. Did you just use your eye to determine whether or not you were head-on?

A. That is all. I had no instruments.

Q. You did not take a sight over the compass?

A. Yes, I laid my hand on it.

Q. You laid your hand on it? A. Yes.

Q. On the compass? A. I put it like that.

Q. You just laid your hand across the center of the compass? A. Yes.

Q. What was the purpose of your laying your hand across the center of the compass?

A. To get Point Reyes.

Q. So as to get Point Reyes? A. Yes.

Q. And your idea was that when you laid your hand across the center of the compass and looked along your hand you would see Point Reyes?

A. Yes.

Q. That is correct, is it not? A. Yes.

Q. Now, how long after that did you take your ex-meridian? [310] A. 14 minutes after.

Q. Were you 14 minutes getting your bearing there?

A. No, the ship had good way, and then she came up, she answered her helm very quick.

(Testimony of George Harris.)

Q. She did? A. Yes.

Q. You had thrown it hard aport? A. Yes.

Q. Now, how far did the vessel swing before you checked?

A. I checked her as she was swinging, and then threw the helm hard astarboard, stopping her from going across.

Q. Did she stop? A. Yes, she fell off again.

Q. Did that effectually bring her back to about the position she was before you threw it hard aport?

A. She fell off all the time.

Q. She kept falling off all the time? A. Yes.

Q. That is while you were taking the bearing of Point Reyes?

A. No; after I had taken the bearing; the sail was set, and caught the wind.

Q. Which way was she falling off?

A. To the westward.

The COURT.—You mean you swung her to starboard until—

A. I gave her a swing, and then to check her from going over too far I put the helm hard astarboard.

Q. Did you take your sight along your hand on the compass at the end of the swing?

A. No, just as she got right end on I took the bearing.

Q. While she was still swinging?

A. She did not swing past—

Q. (Interrupting.) If you put the helm hard aport she must have been swinging.

(Testimony of George Harris.)

A. She swung, and I checked her as she was coming to.

Q. You checked her where?

A. I checked her at northeast half north.

Q. That was your bearing?

A. The bearing. [311]

Mr. GILLIS.—Q. Did you check her while you were taking the bearing?

A. No, I checked it as she was coming up.

Q. When did you start checking, with reference to the time you took the bearing?

A. Just before I took the bearing I threw the helm hard astarboard, to keep her from going too far.

Q. Just before you took the bearing?

A. I don't know how long, but I checked the thing up as she was coming up.

Q. Then you threw her hard astarboard?

A. Yes.

Q. And she began to swing westward?

A. Yes.

Q. How far did she swing?

A. I never stopped to look then.

Q. You never stopped to look? A. No.

Q. Did she keep on swinging, or did she change after that? A. She swung to the westward.

Q. Did you keep the helm still?

A. I put the helm hard astarboard and left it, never touched the helm any more, and went on with my other business.

Q. You never touched the wheel any more?

(Testimony of George Harris.)

A. No, I did not. I don't know whether anybody else did, or not.

Q. I am just asking about you. Then you got your ex-meridian? A. Yes.

Q. What is the index error on that sextant?

A. Nothing, no index on it at all.

Q. No index there? A. No.

Q. Would you say that was a rather remarkable sextant, not to have an index error?

A. Well, it is a good sextant, it has been adjusted, and there is no error upon it that I could find.

Q. You have taken a great many sextant angles, haven't you? A. Yes.

Q. Used a sextant a great deal? A. Yes.

Q. A great many different kinds of sextants?

A. No.

Q. And a great many different numbers of sextants? A. No.

Q. How many sextants, approximately, have you used?

A. I have [312] only got the one I have; that is the one I have always had.

Q. That is the one you have always had?

A. And always used.

Q. That is the one you have always used?

A. Yes.

Q. And from your experience as a mariner, would you say it was rather remarkable to find a sextant without an index error?

A. As far as I have seen sextants, I have seen plenty of sextants with no index error.

(Testimony of George Harris.)

Q. You think it was not remarkable, at all, or out of the way to have a sextant without an index error? A. No.

Q. Now, as I understand, when you took your ex-meridian, you got latitude only? A. Yes.

Q. And that put you here on the map at a point Mr. Green has marked "X," this top point?

A. Yes.

Q. Where did you go to take this ex-meridian?

A. Well, I stood on the port side.

Q. The port side? A. Yes.

Q. Which way was the vessel headed at that time?

A. She was coming around to the westward then. I did not look at the compass, how she was heading.

Q. You know approximately how she was headed?

A. I don't know. I never looked at the compass at all.

Q. You did not have to look at the compass, did you? I am asking for the approximate heading, the approximate direction that she was moving. Approximately how she was headed.

A. She might have been heading northwest, about something like that.

Q. About north? A. About north, yes.

Q. Was she still under way?

A. She was falling off all the time.

Q. She was falling off all the time? A. Yes.

The COURT.—Q. Were your engines stopped?

A. Yes, she just had the sail set. [313]

Mr. GILLIS.—Q. Was the sail set when you took the head-on bearing? A. Yes.

(Testimony of George Harris.)

Q. Was the engine going when you took the head-on bearing?

A. No, the engine had just been stopped.

Q. Just prior to that? A. Yes.

Q. Was the engine going when you went on the bridge? A. Just stopped.

Q. It had been going prior to that time?

A. Yes, just a little.

Q. You don't know how long prior?

A. No, I do not know.

Q. What sail did you have on?

A. The main trisail.

Q. Is that all? A. That is all.

Q. You went on the port side to take your ex-meridian? A. Yes.

Q. You stayed on the bridge? A. Yes.

Q. How did the sun bear?

A. It was somewhere off the port quarter.

The COURT.—When was the sail furled?

A. The sail was always kept set to keep her head on to the wind.

Q. On the tow was the sail furled?

A. They never dropped it down until we got in.

Mr. GILLIS.—Q. How was the wind headed?

A. I never took the bearing of the wind, but the wind was westerly.

Q. How long after you took your ex-meridian did you take your horizontal angle?

A. About two minutes or three minutes; two or three minutes after.

Q. Almost immediately?

(Testimony of George Harris.)

A. Yes. As soon as I got the sextant readings I put the reading down on a little piece of paper I had in my pocket, and I went on the other side of the bridge.

Q. To what seconds does your sextant read?

A. To tens.

Q. It reads to ten seconds? A. Yes.

Q. You said that in your vertical angle you got a reading of 16 minutes and 45 seconds, didn't you?

A. Yes, sir. [314]

Q. If your sextant only reads to ten seconds, how did you get it to 45 seconds?

A. I got it between the two tens.

Q. You just figured it was between the two tens?

A. Yes.

Q. Regardless of the fact that it only reads to ten seconds? A. Yes.

Q. Now, Mr. Harris, will you step down here, please. Your horizontal angle taken from Point Reyes and the Southeast Farallones fixes your position somewhere on this circle?

A. Yes, on this dot.

Q. On this dot? A. Yes.

Q. With that bearing alone and only that bearing your position could be anywheres around the circle, could it not?

A. Not when you get up here.

Q. But I say if you only have the horizontal angle and nothing else.

A. The horizontal angle without a bearing, do you mean?

(Testimony of George Harris.)

Q. Yes, without a bearing; just take the horizontal angle, and that is all that you have, with that alone it would put you anywhere around the circle, wouldn't it? A. Yes.

Q. That is true, isn't it?

A. It could put you up here or put you here.

Q. Anywhere on the circle; you would still have the same angle? A. Yes.

Q. Then, in order to fix your point on that circle you get your latitude? A. Yes.

Q. And with your latitude alone, and without your vertical angle, it would put you anywheres along that line of latitude, wouldn't it.

Mr. GREEN.—You mean without the horizontal angle?

Mr. GILLIS.—Yes, I mean without the horizontal angle.

Q. If you get your latitude with the ex-meridian it would put you anywhere along your line of latitude, wouldn't it? [315]

A. Yes, the ex-meridian latitude, that is, that is your latitude.

Q. In order to get your position you would have to anchor yourself some place on that line, wouldn't you?

The COURT.—He doesn't understand your question, Mr. Gillis; he thinks you mean he would have to anchor the vessel.

Mr. GILLIS.—Q. To fix your position on that line you would have to take a bearing, wouldn't you? A. Yes.

(Testimony of George Harris.)

Q. And to fix your position on that line you took a bearing of Point Reyes, didn't you?

A. No, not exactly. I took the ex-meridian latitude as an extra check. I took everything I could.

Q. The ex-meridian was an extra check?

A. Yes, sir.

Q. You took your bearing and fixed yourself on that line by your bearing on Point Reyes; where that bearing would cross your latitude, that would be the position of the ship; is that not true?

A. It should do that.

Q. Isn't that what it did? A. Yes, sir.

Q. Did you fix your position on that latitude line by your vertical angle?

A. On which line, on the bearing?

Q. You have a line of latitude that you know.

A. I fixed the vertical angle along the line of bearing.

Q. I am speaking of your latitude now. You had some place on that line of latitude, didn't you?

A. Yes.

Q. And in addition to the bearing you took a vertical angle of Point Reyes in order to fix your position on that line of latitude?

A. No, I took the vertical angle of Point Reyes to fix it up with the bearing.

Q. To fix it up with the bearing? A. Yes.

Q. The head-on bearing that you took?

A. Yes.

Q. And those two would determine the point on the latitude that you would get? A. Yes. [316]

(Testimony of George Harris.)

Q. You say you checked the current that day?

A. I checked it the day before, up to one o'clock.

Q. Up to one o'clock that night?

A. One o'clock that morning of the 12th, before I went below.

Q. How many times had you checked the current on that watch?

A. I only checked it once that watch.

Q. How did you check it?

A. Took cross-bearings twice to see if she drifted. I measured from one cross-bearing to the other in the two hours.

Q. Was she under sail at that time?

A. She had her trisail up.

Q. She was under steam?

A. Not for the two hours that I was checking up the current.

Q. Was she moving before or after that time?

A. She moves about at various times in a watch.

Q. I appreciate that, but I am speaking of that time.

A. Not during the two hours I am speaking of.

Q. At any time on that watch was the engine going? A. Oh, yes.

Q. Which way were you headed during that watch? A. Always right to the westward.

Q. You always headed to the westward and you were headed to the westward that night?

A. Not all the time.

Q. How did you check up to find out how far you had drifted? A. I took the cross-bearings.

(Testimony of George Harris.)

Q. Of what?

A. Of the Farallones and the Point Reyes light.

Q. How far off were you then?

A. About 15 miles, 15 or 16 miles.

Q. How did you take that bearing?

A. Turned the ship around.

Q. You took two head-on bearings?

A. No, I don't know that I took them head-on that time.

Q. How did you take them?

A. I could look along the compass without putting the ship on head-on bearing for that. [317]

Q. Did you look along the compass then to take those bearings the night before? A. Yes.

Q. Just how did you do that?

A. Look along the compass at the lights.

Q. Stood back of the compass and sighted over the compass to the light? A. Yes.

Q. Did you use any instrument at all? A. No.

Q. Did you put your hand on the compass?

A. Yes.

Q. Did you use your hand? A. Yes.

Q. Approximately how did Point Reyes bear at at that time?

A. I cannot remember the bearing, that is too long ago.

Q. I say approximately. A. I could not say.

Q. Which way was it?

A. North and east, or somewhere around that way.

Q. Which way did the South Farallone lighthouse lie from you at that time?

(Testimony of George Harris.)

A. It would be somewhere around south of east; I could not state the exact bearing or anything like that for I don't remember.

Q. You would have to look right over the stern of the ship to see it, wouldn't you? A. No, sir.

Q. Wouldn't you if you were headed westward?

A. I didn't say that I was headed to the westward all the time.

Q. Oh, you turned around then, did you?

A. I guess I did.

Q. No guessing about it. Don't you know? Can't you remember what you did?

A. No. I didn't take much stock in that. I checked her up.

Q. And it is upon those bearings that you determined the drift of the ship that night?

A. I had been doing it all the time we were off there.

Mr. GILLIS.—I will ask the reporter to read the question and have the witness answer it. [318]

(Question read by the reporter.)

A. No, I don't say that night, but I took the bearings all the time.

Q. Do you know whether or not there is a steady current?

A. That is what we experienced, a steady current, while the wind was westerly.

Q. Did you get any data on that at all?

A. While we were off there I was checking up the drift and found out that sometimes it would

(Testimony of George Harris.)

be two knots and sometimes less, sometimes one, sometimes about half a knot.

Q. Don't you know there is a regular steady current out there beyond the Farallones, about where you were?

A. So it says in the Pacific Pilot.

Q. And does not that say that the current is south southeast?

A. Yes, south southeast but it is affected by the winds.

Q. Was there any wind on the 12th day of the month?

A. No, but it was blowing hard a couple of days before.

Q. Wasn't it quiet on that day?

A. The day before, yes.

Q. Wasn't it quiet on the 12th of October?

A. Yes.

Q. It was a still day?

A. A still day, a fine day.

Q. It was a perfect day? A. Yes.

Q. What was the last angle or bearing that you took that morning?

A. I didn't take any that morning.

Q. I mean on October 12.

A. I didn't take any that morning. I left the bridge at one o'clock.

Q. You just testified about some bearings and some angles. What was the last one of those you took?

A. Which do you mean, just before the capture?

(Testimony of George Harris.)

Q. Yes.

A. The horizontal angle was the last one.

Q. Where were you when you took that?

A. On the starboard side.

Q. You had then moved from the port to the starboard? [319]

A. I stood on the starboard side when I took it.

Q. You had moved then from the port to the starboard side? You have testified that you took the ex-meridian on the port side?

A. Yes, I walked across to the other side.

Q. You walked across to the starboard side?

A. Yes, sir.

Q. How was the vessel headed then?

A. I couldn't tell, I never looked at the compass.

Q. Can you approximately tell how she was headed? A. No, I cannot.

Q. You don't know whether she was headed north, east, south or west?

A. I knew she was up somewhere toward northwest, or something like that.

Q. Something toward northwest?

A. Somewhere around there.

Q. Which way would the southeast Farallone bear from you then?

A. It would be a little on the starboard quarter.

Q. A little on the starboard quarter?

A. Somewhere around there.

Q. Nearly astern?

A. I don't say nearly astern. I forget exactly how it was.

(Testimony of George Harris.)

Q. When you took the angle with your sextant, can you approximate how near it was astern?

A. I forget now.

Q. Was there anything there that intercepted your view on that sextant angle? A. No.

Q. Did the after rigging of the ship affect it in any way? A. No, that would not affect it.

Q. You had a clear vision both of Point Reyes and the Southeast Farallones? A. Yes, sir.

Q. You were constantly checking that on the current for your position every day, weren't you?

A. Yes, sir.

Q. And you did that from the first day that you arrived there?

A. Yes, while we were in sight of land we used to [320] check up.

WITNESS.—(Continuing.) The first time that I found out we were not going to Mexico, as I thought we were when we started, was after we had been down here opposite the Golden Gate for two or three days. We had seen the "Malahat" at that time, but had not taken cargo from her; we took cargo from her later on. By that time I guess we had put cargo on boats, but I never took no tally of anything like that. The first time I realized that we were engaged in rum running was, I should think, when they started putting cargo into the small boats. It looked like it then. That was the first intimation that I had of it.

Mr. GILLIS.—Q. You believed that all the sacking that you had done on the way down, and the

(Testimony of George Harris.)

first two or three days that you were out of the Golden Gate here, that you were sacking your liquor for a Mexican port? A. I didn't know.

Q. Didn't you believe that?

A. I had never been on a rum runner before.

Q. I didn't ask you that. I say didn't you believe that?

A. I didn't bother to think about it.

Q. How is that?

A. I say I didn't bother to think about it. I was in the ship and I just stopped there until I could get back. I couldn't do anything about it.

Q. Didn't you have any thoughts about it at all?

A. No, except that I wanted to get the ship empty and get back out of it.

WITNESS.—(Continuing.) When I saw the small boat that the "Shawnee" was firing at at the time of the capture I didn't know that it was the "C–55." I don't remember any boat. That is the first that I saw of her. At the time the tow started I was on deck. I did not take any stock of which way the vessel was headed, but I know that she was headed to the [321] westward. I did not take the bearing of Noonday Rock. I took somebody else's figures for that. The captain and the second officer were checking her in. I did not take any bearing of the North Farallones; the captain and the second officer took that bearing and gave me the figures for that. Referring to Defendants' Exhibit "C," the second officer gave me those figures. I copied them down as he gave them

(Testimony of George Harris.)

to me from his paper. The distance there between the buoy and the rocks is 3.7. I did not allow anything for drift.

On redirect examination the witness testified as follows:

Mr. GREEN.—Q. Mr. Harris, in figuring your speed between the Noonday Rock buoy and the North Farallone Rock, why didn't you allow anything for drift?

A. I don't know. I just took the distance.

Q. What speed were you trying to determine?

A. The speed the vessel was going over the ground.

Q. Which observation was it that you took that fixed your longitude?

A. The horizontal angle and the bearing would give the longitude.

Q. Would not the horizontal angle fix the longitude?

A. Yes, that is what I say, the horizontal angle and the bearing would fix the longitude.

Q. Did the foremast of the "Quadra" interfere with your taking a head-on bearing?

A. It shouldn't; you should get it within a degree.

Q. What was the condition of the ship at that time as to riding level?

A. I don't remember that.

Q. Did she have any list at all?

A. She might have had, I don't remember that.

Q. In taking the vertical angle of Point Reyes hill, did you correct for height of eye?

(Testimony of George Harris.)

A. No, I just worked it off as I [322] got the angle. That is what I always did.

Q. If you corrected for height of eye, would it have placed you nearer or further away from Point Reyes?

A. It would show me further away, I should think.

On recross-examination the witness testified as follows:

Mr. GILLIS.—Q. I notice on this paper, Defendants' Exhibit "B," magnetic north 39 degrees 22 minutes east: Is that right? A. Yes.

Q. That was the reading of the compass?

A. That was the magnetic bearing.

Q. At that time? A. Yes.

Q. Did you apply any deviation?

A. There is no deviation on a ship.

Q. There is no deviation to the compass?

A. No.

Q. Do you know that, as a matter of fact?

A. When the ship was swung we got the card from the one previously and there was no deviation.

Q. Have you got that card?

A. I have not got it on me.

Q. There was no deviation at all? A. No.

Q. Is it not a fact, Mr. Harris, that when the ship is headed northeast one-half north, as it was pointed at that time, that if there was a deviation of the compass it would be greatest at that time?

A. No, I don't see why it should.

(Testimony of George Harris.)

Q. Do you know whether it would, or not?

A. Well, I don't know whether it would, or not.

Q. Do you know when your quadrangle deviation is greatest?

A. Yes, when it is on the quadrangle point.

Q. What are those points?

A. Northeast, northwest, southeast, southwest.

Q. Do you know what causes a quadrangle deviation? A. Yes.

Q. What?

A. Induction in horizontal soft iron. [323]

Q. I show you a picture and ask you if you recognize that as the wheel-house of the "Quadra"?

A. Yes, that is the wheel-house of the "Quadra"; it looks like it anyway.

Mr. GILLIS.—I ask that be introduced in evidence and marked Government's exhibit next in order.

(The photograph was marked U. S. Exhibit No. 57.)

The COURT.—Let me see it. Was that taken from the starboard?

Mr. GILLIS.—Yes, sir.

Q. Showing you Government's Exhibit No. 57, and pointing out on this picture, Mr. Harris, this cable that runs around the wheel-house, would you say that that would have any effect upon the deviation of the compass?

A. Them derricks were up that day.

Q. Would you say that they were up that day?

(Testimony of George Harris.)

A. Yes.

Q. Would you say that they were up that morning? A. They were up that morning.

Q. You are positive of that?

A. Yes, all the derricks were up, not only them but the other derricks were up.

Q. You were in the hold all morning, were you not?

A. From breakfast time up until the time I came on the bridge.

On further redirect examination the witness testified as follows:

Mr. GREEN.—Q. What point did you say there was no deviation on?

A. I said we had no deviation at all. As far as I remember, the compass was pretty well magnetic.

Q. Is one degree deviation much of a deviation?

A. No, that is nothing; that would not be material here or there.

Q. I hand you a deviation card and ask you if you ever saw it before?

A. Yes, that is the "Quadra's."

The COURT.—You treated your magnetic as the true magnetic, did you?

A. Yes, I did, because one degree is nothing in a ship like that. [324]

Mr. GREEN.—I offer the deviation card of the "Quadra" and ask it be marked Defendants' Exhibit "D."

(The card was marked Defendants' Exhibit "D.")

(Testimony of George Harris.)

Q. Now, Mr. Harris, when you shipped on the "Quadra" did you know what the cargo was?

A. Well, I knew that it was liquor.

Q. You knew that it was liquor? A. Yes, sir.

Q. At the time that you shipped on the "Quadra" and knew that the cargo consisted of liquor, did you know there was any intention on the part of anyone to tranship any of that liquor prior to her destination as shown upon the shipping articles? A. No.

Q. Mr. Harris, when you were off the coast of the United States, and particularly off the coast of San Francisco, and took part, under the captain's orders, in assisting in the unloading of liquor into small vessels, did you know you were violating in any way any law of the United States?

Mr. GILLIS.—I object to the question on the ground that it is leading and suggestive, and putting the answer right into the witness' mouth. It is not proper redirect examination.

The COURT.—It is entirely immaterial whether he knew it, or not. The objection is sustained.

Mr. GREEN.—We take an exception. That is all.

TESTIMONY OF J. EVELYN, FOR DEFENDANTS.

J. EVELYN, a witness called on behalf of defendants, being first duly sworn, testified as follows:

My name is J. Evelyn. I am one of the defend-

(Testimony of J. Evelyn.)

ants in this case. I live in Vancouver. I came out in 1920. I was born in Liverpool, England. I have been a British subject all my life. I have been following the sea since 1916. I hold a second mate's certificate of competency from the British Board of Trade. I don't remember just when I got that. That certificate is in [325] a safe deposit box in the Bank of Montreal at the present time. I have been unable to obtain it from there to present here. I have been in San Francisco since the time of my arrest. I previously had a coasting mate's certificate, Canadian. After receiving that coasting mate's certificate, I sailed on the east coast. I was second mate on a vessel, then I was third mate. I was second mate afterwards on that certificate and then third mate again. Since I received my last certificate I have been sailing as third officer on some of the Canadian Government merchant marine vessels.

On the 12th day of October of last year I was second officer on the "Quadra." I was hired by Captain McKay, who was captain of the "Quadra" prior to Captain Ford joining the "Quadra," I think I joined the "Quadra" about the 25th of August, of last year. At that time she was getting ready to load cargo. I helped to get her ready generally for sea. I superintended the loading of the cargo. I knew what the cargo was. I signed on for a voyage to Mexico and return, as per the shipping articles, and my signature is on the shipping articles. We sailed from Vancou-

(Testimony of J. Evelyn.)

ver about the 10th of September, 1924. No one told me that a part of the cargo of the "Quadra" was to be unladen before reaching the point of destination. I had never before sailed on a vessel that was laden with liquor. I had previously sailed down the west coast of North America, down as far as San Pedro. That was when I was second mate on the "Canadian Rover," vessel of the Canadian Government merchant marine. That was about two years ago now. I have been in San Francisco before, coming from Australia. I was here on the "Canadian-Scottish," "Canadian Winner," and also the "Canadian Traveler."

I used to assist the chief officer in the navigation of the [326] "Quadra" and keep a watch along with him. The "Quadra" arrived off the Faralone Islands on the morning of the 16th of September. I do not just remember the date when the first boat appeared alongside of the "Quadra" and was loaded with liquor. It might have been two or three days after we arrived. From that time until the 12th of October several vessels appeared alongside the "Quadra" and received cargoes of liquor. I used to handle the cargo on board the "Quadra," but I never went aboard the other boats themselves. I never personally placed any of it on board. Men under my command had something to do with it. I was acting under the master's and the chief officer's orders. At the time of the seizure of the "Quadra," October 12, 1924, I did not know any of the other defendants in this case besides

(Testimony of J. Evelyn.)

the officers and crew of the "Quadra." I did not know and never heard of the defendant Balenger or the defendant Quartararo, or the defendants Pensotti and McKenzie, or the defendants Allen and Neilsen. I remember the Crivellos testifying here. To my knowledge, I never saw them before they appeared here as witnesses in this court. I do not remember seeing them at or near the "Quadra."

I came on watch at one o'clock in the morning of the 12th of October, relieving the chief officer, Mr. Harris. The first observation I took to fix the position of the steamer "Quadra" that morning was after daybreak, about half past six or thereabouts. I headed the vessel to what I wanted to take a bearing on, Point Reyes, and the lighthouse on the South Farallone. I do not remember how those objects bore at the time.

Mr. GREEN.—Q. Do you remember approximately the position of the steamer "Quadra" at that time with reference to the North Farallone Rocks?

A. She would be about 16 miles off.

Q. Which way. A. About west magnetic.

[327] Q. About west magnetic? A. Yes.

Q. Did you take another observation of the same kind later in the morning?

A. Yes, I took others at eight o'clock.

Q. Of what object? A. The same objects.

Q. Did you take them in the same way?

A. In the same way.

(Testimony of J. Evelyn.)

Q. Do you remember approximately in what position that observation fixed the steamer "Quadra" with relation to the North Farallone Rocks?

A. She drifted about a mile, or maybe less, to the east southeast.

Q. When did you go off watch?

A. I went off at eight o'clock.

Q. And you were relieved at that time by whom? A. Captain Ford.

WITNESS.—(Continuing.) When I went off watch I had my breakfast and then I turned in. I did not return to the bridge until nearly twelve o'clock, it must have been five minutes of twelve, When I returned to the deck of the "Quadra" I saw the revenue cutter "Shawnee." I was on the bridge when the tow commenced.

Mr. GREEN.—Q. Did you take any observation at the time of passing known objects on the tow in? A. Yes, sir.

Q. What did you take your first observation of?

A. I took abeam bearing of Noonday Rock buoy.

Q. Do you remember what time the tow commenced? A. Yes, sir.

Q. What time was it?

A. 12:27 when the ship started to move, move through the water.

Q. What time was Noonday Rock buoy abeam?

A. 2:27.

Q. What time was North Farallone Rock abeam? A. 3:11.

(Testimony of J. Evelyn.)

Q. Do you know the distance between Noonday Rock buoy and North Farallone Rock?

A. Yes.

Q. What is it?

A. 3.7 miles. That is the one that I would call the most southern of the North Farallone group.

Q. Basing your calculation upon the point just mentioned, did [328] you calculate the speed of the tow? A. Yes, sir.

Q. What was it? A. 5.04 miles—knots.

Q. Knots? A. Yes.

Q. Did you calculate that at the time?

A. Yes.

Q. Have you with you your calculations made at that time?

A. I have the paper but I haven't got it with me.

Q. Where is it? A. I have it at the hotel.

Q. Is that the paper you showed to me yesterday? A. Yes, sir.

Q. Will you produce it in the morning?

A. Yes, sir.

Q. Did you call for any movements of the engine between one o'clock and eight o'clock in the morning of that day?

A. Yes, it was moving several times.

Q. Which way were you moving?

A. Always to the westward.

Q. Always to the westward?

A. That is, with the exception of the times when I headed her onto a light to take a bearing.

(Testimony of J. Evelyn.)

Q. Why did you call for engine movements during the early morning and head the ship to the westward? A. I thought she was setting in.

Q. To overcome the drift that you felt was pulling her in? A. Yes, sir.

Q. Did anyone assist you in taking these bearings of Noonday Rock buoy and North Farallone Rocks? A. Yes, sir.

Q. Who? A. Captain Ford.

Q. Was he present with you when you took the bearings? A. Yes, sir.

Q. Did he take some at the same time?

A. He checked them with me.

Q. Did you communicate the information that you received from these bearings to Mr. Harris.

A. Yes, I gave him the times accurately.

Q. Did you check over Mr. Harris' bearings taken after the [329] seizure? A. Yes, sir.

Q. Did you find them to be correct at that time? A. Yes, I found them to be correct.

The COURT.—Q. Do you mean you checked the figures or took bearings?

A. I just checked the figures.

Mr. GREEN.—Q. How far, at the time of the seizure of the "Quadra" by the "Shawnee" was the "Quadra" from the North Farallone Rocks?

Mr. GILLIS.—If he knows, he has not shown by any evidence thus far that he took any bearings or anything else that would give him that knowledge. He has not shown that he is qualified to answer that question.

(Testimony of J. Evelyn.)

The COURT.—How would he answer that?

Mr. GREEN.—Only by checking the bearings.

The COURT.—He did not check the bearings; he only checked the figures. All that he could testify is that he saw a calculation made by somebody else. I will sustain the objection.

Mr. GREEN.—Q. I understood you to say that the first time that you found out that part of the cargo of the "Quadra" was going to be transhipped before reaching the point of destination was a couple of days after you reached your position off the Farallones?

A. It might have been a couple of days, it might have been three days. I am not quite sure as to the time.

Q. But at the time that you participated, either directly or indirectly in the unloading of part of the cargo of the "Quadra" into small boats in that position, did you know that you were in any way violating any law of the United States?

Mr. GILLIS.—The same objection to that as was made to a similar question asked the witness Harris.

The COURT.—The objection is sustained.

Mr. GREEN.—Exception. [330]

Q. Did you ever do anything, Mr. Evelyn, in connection with the unloading of the cargo in the "Quadra" excepting under the orders of the Captain? A. No, sir.

On cross-examination the witness testified as follows:

(Testimony of J. Evelyn.)

I was on the "Canadian Traveler" about a month before I was employed to go on the "Quadra." When I was employed to go on the "Quadra" I saw Mr. Mason, the chief engineer, and Mr. Winterburn, the third engineer. I did not see anybody else except members of the crew of the "Quadra." The only person I had any contact with at all, the only persons with whom I came in contact at all, were the officers and members of the crew of the "Quadra." On the 25th of August the "Quadra" was in drydock, and had been in drydock, I think, two days. After they were through with her on the drydock she was taken along Valentine Pier. I went with her from the drydock to the pier. I do not remember ever having seen her before she went into dry dock. We commenced loading the vessel as soon as she got alongside the pier. Captain McKay was there a great deal of the time. I did most of the superintending of the loading. I did not have any talk with Captain McKay about the cargo being all liquor, but I knew it was all liquor. That is not unusual, because there are lots of vessels that take cargoes of liquor. They come out of all ports in the world with liquor. I don't know that there are a lot of vessels that come out of Vancouver with cargoes of liquor. I am not familiar with coastal shipping out of Vancouver. Prior to that I had confined my attention to ships going across the ocean, that is, mostly. I had read in the papers of coast liquor ships going out of Vancouver, but

(Testimony of J. Evelyn.)

that is all I knew of it. I may have read of some of the names of the boats but I do not remember them, they made no impression on [331] me. I had heard of the "Malahat" before. I did not know exactly what she was engaged in doing; I did not know that she was a rum runner, I didn't know she was carrying liquor at that time. I did not know anybody aboard the "Malahat." I just have seen her in Vancouver; I saw her at anchor, alongside the pier. I never watched her loading up. I never heard of the "Odena." I never heard of the "Erskine." I have seen the "Coal Harbour" in Vancouver, alongside the dock. I did not know Captain Hudson or any of the officers or members of the crew of the "Coal Harbour" at any time, and never talked with anybody who had been on the "Coal Harbour," and did not know what she was engaged in or what her run was. I never heard of the "Jesse." I don't know that she pulled into port just before we left. I never heard of the "Ironbark," or I never heard of the "Kiltuish" at that time.

I think we finished loading the "Quadra" two days prior to sailing; I am not quite sure of the date. I think we finished loading her on the 8th and we sailed on the 10th. We remained at the pier during that time. When we got out into the Straits we did not meet any vessel. I did not see the "Kiltuish" out there. To my knowledge the "Kiltuish" did not come alongside of our vessel. I remember that on the morning of the 11th of

(Testimony of J. Evelyn.)

September I had the 12 to 4 watch. I went to bed at eight o'clock the night before, that would be the night of the 10th. The only time we left the pier in Vancouver before we went to sea was when we swung out into the harbor to correct the compass. That was the day before we sailed. After we did that, we brought her back to the pier again. Captain Ford was on the boat at that time. That only took us two or three hours. I think Captain Ford joined the "Quadra" before the 7th; I am not sure as to the date. Captain McKay did not tell me why he was not [332] going to continue on the "Quadra." I had not known Captain Ford before he joined the "Quadra." On the 11th, the morning of the 11th, I had the 12 to 4 watch. I did not see the "Kiltuish" tie up alongside of us. I did not see any Canadian cutter from the time we left until we started down the coast. I think the first time I saw the "Malahat" was the day we arrived off the Farallones, about the day after; I am sure it was not the same day. When we arrived here we took a position about 25 or 30 miles off the Farallones, about west magnetic. We stated there all day. I did not see any boats come up that day and communicate with us. I believe the "Malahat" discharged part of her cargo to us, yes, she did. We went alongside of her and tied up to her. I don't remember how many days that was after we arrived here. I saw several of the small boats that came out to get liquor. I do not remember their names. I do not remember the names of any of

(Testimony of J. Evelyn.)

them. I never looked at them very closely. I was there, though, and I helped supervise the loading from the "Quadra" onto them. There was one small boat that did a lot of transferring from the "Malahat" to the "Quadra." I don't remember if it was the same boat that transferred a lot of empty barrels—fuel barrels, etc.—from the "Quadra" to the "Malahat," but there was a lot of barrels. I don't remember that it tied up behind us one night. I do not know the name of that boat. We saw the "Coal Harbour" after we arrived. There was transfer of cargo from the "Coal Harbour" to the "Quadra." It was a transfer of cases; it might have been whiskey, or it might have been gin, I don't remember now. It might have been either. It might have been wine, for all I know. It was liquor, that is all I know. When we left the Straits up at Vancouver and started south, I did not do any of the supervising of the [333] cargo. I saw it done, though. Mr. Harris had the supervision of the crew. He used to give his orders to the boatswain and the boatswain would carry them out. Sometimes I helped, but he was working the crew, I was not doing that. I was supervising the working of the crew when it came to loading these small boats, and I took my orders from the first officer; he showed me the quantity and the kind of liquor to take out of the "Quadra" and put on the small boats. The crew were not working at sacking every day, that is, all day. They had other duties to perform. I would not say that

(Testimony of J. Evelyn.)

they were sacking a lot of the time. It might have been an hour one day and two hours the next, or something of that kind. I do not know that there were 15,000 sacks put aboard; I don't know the number of bales put aboard. I don't know that there were 25 or 30 bales put aboard. My memory is very hazy on that point. I knew we had bales of sacks, though, when we left Vancouver. I knew they were in the hold, I saw them. I could not say from my observation of them how many there were. We were sacking sometimes while we were out here opposite the Farallones. I didn't know anything about the object of the sacking. I understood the ship was going to Mexico and I had no reason to think otherwise. I believed that they were sacking it for Mexico. When they stopped outside the Golden Gate and were sacking liquor and the small boats were coming out I didn't know whether they were sacking that liquor for Mexico. I didn't know then that I was aboard a rum-runner. When I say I didn't know, I mean that of course I had my doubts then. That is all I had, just a doubt. I never said anything to the Captain about it, or I never said anything to the first officer about it, or I never said anything to any of the members of the crew about it. It is customary on a vessel for everybody to take orders from the master. [334] It is customary in coasting vessels for a crew of a vessel to work the cargo on a voyage. It is not customary for them to change the cargo from one character of package to another, not even on

(Testimony of J. Evelyn.)

coasting vessels. I should say that that was an unusual procedure. Still, I did not talk to anybody about it, I just kept my own counsel. The subject was never brought up.

About ten minutes to twelve on Sunday, October 12th, the steward called me and told me that we had been seized by a revenue cutter. I came out on deck and went to the bridge. At that time there were two officers from the "Shawnee" there. I do not know whether they were on the port side or the starboard side. There was nobody at the wheel. I think they were just getting the tow-line aboard at that time. The "Shawnee" was a little bit on our starboard bow. I don't remember which way the "Quadra" was headed, I didn't look at the compass at that time. I would say, though, that she was headed westerly. There was no motion on the ship at that time. I do not know if we had been in motion prior to that time. I was asleep up to the time the steward awakened me. During my watch that morning we had sail up on the "Quadra"; we had up the main sail and the trisail. That sail was up constantly. During my watch that morning from one o'clock to eight I signaled the engine-room several times. I told them that when I rang for slow I wanted the engines just to turn over, to go as slow as possible. That was the signal that I gave each time. I do not remember how many times I did that during the night.

Mr. GILLIS.—Q. Was your vessel that night

(Testimony of J. Evelyn.)

always headed westward, or in the general direction of westward—I mean offshore.

A. Well, of course, when I stopped lots of times, of course, she would swing around.

Q. What swung her around? A. The sail will.

Q. Which way was the wind?

A. There was very little wind. [335]

Q. Well, which way was it?

A. Westerly, I should say.

Q. You fixed your position twice on your watch by head-on bearings? A. Yes, sir.

Q. And you found her drifting, did you?

A. Yes, sir.

Q. Which way? A. East southeast magnetic.

Q. On each occasion? A. Yes, sir.

Q. And it was after that that you would order the engines to run slow?

A. No, I did not move the engines after eight o'clock in the morning; I was not up there to do so.

Q. After you got on to the bridge, did you stay on the bridge then continuously after twelve o'clock?

A. No, I would not say I stayed up there continuously, I was up there a great deal of the time, though.

Q. Were you up there until you passed the North Farallone? A. No, sir.

Q. Were you up there until you passed the North Farallone? A. Yes, sir.

Q. You took the bearing of Noonday Rock?

A. Yes, sir.

(Testimony of J. Evelyn.)

Q. Did you or Captain Ford?

A. Captain Ford and myself took it.

Q. Where did you stand to take that bearing?

A. I stood on the starboard side of the compass.

Q. You stood on the starboard side of the compass? A. Yes, sir.

Q. Was it a compass bearing?

A. A compass bearing.

Q. And Noonday Rock was on your port; is that correct? A. That is correct.

Q. And when you were abeam of Noonday Rock you took the bearing of the compass?

A. Well, I stood on the starboard side. The compass was in front of me. I don't say it was a compass bearing.

Q. Did you use the compass in getting the bearing? A. No, sir.

Q. What did you stand on the side of the compass for, then?

A. That was the best position for me to take it, I thought, so [336] that I could get it in a line with the window and tell just when I was abeam of it.

Q. You took it off the window and not off the compass, did you?

A. I got it in a line with the window—the window sill, for instance.

Q. Then you took it off the window and not the compass, didn't you?

A. Yes, I suppose you could put it that way.

Q. How is that?

A. I say I suppose you could put it that way.

Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1958

No. 312

GEORGE FORD, GEORGE HARRIS, J. EVELYN, ET AL., PETITIONERS,

vs.

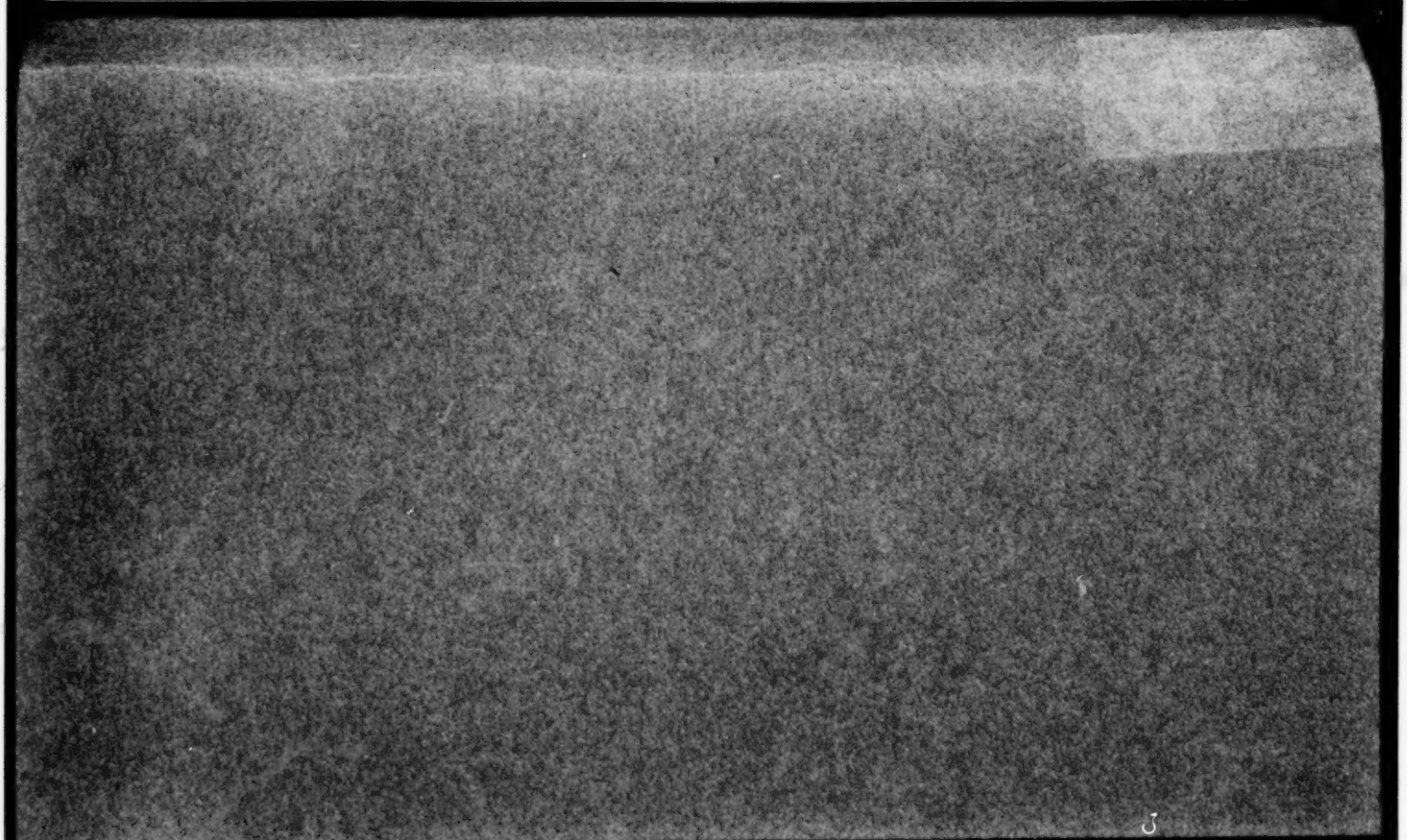
THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE [illegible] CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 18, 1958

CERTIORARI GRANTED APRIL 28, 1958

(31,708)



No. 4602

United States

Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

(IN TWO VOLUMES.)

GEORGE FORD, GEORGE HARRIS and J. EVELYN,
Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error,

VINCENT QUARTARARO,
Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error,

CHARLES H. BELANGER,
Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error.

VOLUME II.

(Pages 417 to 833, Inclusive.)

Upon Writ of Error to the Southern Division of the United States District Court of the Northern District of California, First Division.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

(Testimony of J. Evelyn.)

Q. Did you take the other bearings off the window, too, the North Farallone?

A. Yes, I took that in the same manner.

Q. And that was off the southern island or southern rock of the North Farallone group, was it?

A. That is what I call it.

Q. Was your window open when you took that bearing? A. I don't remember.

Q. It may have been closed?

A. It might have been closed.

Q. In taking that bearing, did you just stand behind the compass and when Noonday Rock came into the window you took the bearing?

A. I took the bearing when it was abeam, and noted the time at the same time. It was the time I wanted to get when the buoy was abeam.

Q. Well, how did you know it was abeam?

A. We were not very far off it.

Q. How far off it were you?

A. I might have been half a mile, or it might have been a little bit less or a little bit more.

Q. Weren't you a mile off it?

A. I don't know whether we were a mile off; we may have been.

Q. Just tell me how you took that bearing, with reference to the window. The object came to view in the window, did it not? A. Yes.

Q. And when it came into view, you figured that was the time to take the bearing?

A. No. I was looking at the ship's head. [337] The ship's head was on east magnetic, and I could

(Testimony of J. Evelyn.)

easily judge when the thing was at right angles to me.

Q. Just by looking through the window?

A. Certainly.

Q. Did you look along the ship's head?

A. I was looking at the compass, too, looking at the ship's head in the compass.

Q. Did you take it off the compass, then, or off the window?

A. I didn't take the abeam bearing off the compass.

Q. Did you take it off the front of the wheel-house? A. I was in the wheel-house myself.

Q. You were inside of the wheel-house?

A. Yes, sir.

Q. Did you take it through the window?

A. Yes, I took it through the window.

Q. As the object appeared in the window, the first time it appeared in the window then you figured that it was at right angles with the ship?

A. Yes, sir.

Q. And that is the way you got your bearing?

A. Yes, sir.

Q. When you came abeam of the southernmost island of the North Farallone group did you take a bearing of that island in the same manner that you did of the Noonday Rock buoy? A. Yes, sir.

Q. Was that off your port or starboard side?

A. That was off the port bow.

Q. It was off the port bow?

A. I should say it was off the port beam.

(Testimony of J. Evelyn.)

Q. Off the port beam? A. Yes, sir.

Q. You say Captain Ford helped you take those bearings? A. Yes.

Q. How did he assist you in taking them?

A. He stood on the starboard side in front of the wheel-house and looked in a line along the front of the wheel-house and took it that way.

Q. He took the bearing along the front of the wheel-house? A. Yes, sir.

Q. And you took it through the window?

A. Yes; I was inside the [338] wheel-house and he was outside.

Q. Who took the time?

A. I noted the time inside the wheel-house.

Q. Did he give you the mark signal from the outside?

A. Yes, he sung out when she was on, and I could see when she was on myself, and I noted the time at the same instant.

Q. Do you know whether he took the time also, or just yourself? A. No, he sung out to me.

Q. Did you ever talk with any of the men that came out in these small boats? A. No, sir.

Q. Never had any conversation with them at all.

A. No conversations.

Q. They brought the San Francisco papers out to you, didn't they? A. Not to my knowledge.

Q. Didn't you ever see any? A. No, sir.

Q. Not one San Francisco paper while you were out there? A. Not one.

(Testimony of J. Evelyn.)

Q. They brought your mail out to you, didn't they?

A. Not to my knowledge; they never brought any out to me.

Q. Didn't they bring it to other members of the crew? A. Not to my knowledge.

On redirect examination, the witness testified as follows:

Mr. GREEN.—Q. Have you with you the paper upon which you made your original figures at the time you took these bearings, and noted the times?

A. Yes, sir.

Q. Referring to a sheet of paper dated at the top "October 12, 1924," in whose handwriting are the writing and figures upon this sheet of paper?

A. Mine.

Q. When did you make those notations?

A. At the time, just after I noted the time and took the bearings. I worked them out in the wheel-house, or in the chart-house, rather, in back of the wheel-house.

Mr. GREEN.—I offer this sheet of paper and the writing [339] and the figures thereon and ask that it be admitted in evidence and appropriately marked.

(The document was marked Defendants' Exhibit "E.") [340]

TESTIMONY OF R. GISBOURNE, FOR DEFENDANTS.

R. GISBOURNE, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I am one of the defendants in this case. My home is at Ladysmith, British Columbia. I was born there. I am a citizen of the British Empire and have always been since my birth. I am a seaman by occupation. I have followed the sea nine or ten years. On the 12th of October last I was attached to the "Quadra." I joined her the night before she sailed from Vancouver. I was hired by Captain Ford. I did not know what cargo the "Quadra" was carrying at the time I signed on. I did not learn what kind of a cargo the ship had until we were out at sea, about a day out, I think. I signed on for a voyage to Mexico and return. Neither Captain Ford nor anyone else told me before I sailed that any of the cargo was going to be unloaded before reaching the port of destination. I found that out when I was off the coast here. I saw cargo unloaded from the "Quadra" into small vessels. I took part in that unloading. I was working down in the hold most of the time. I signed on as an A. B. Apart from the officers and members of the crew I do not know any of the defendants in this case and never saw any of them prior to our leaving Vancouver. I saw the Crivello Brothers testifying here in court. I never

(Testimony of R. Gisbourne.)

saw them before. I never saw Pensotti and McKenzie before coming into this courtroom, or Allen and Neilsen. I do not know the names of any of the small vessels that came alongside. My duties were such that I never was in a position to see the names of any of the boats. I was a winchman and all I could do was to look after the winch. I was winchman on the "Quadra." The winch was on the forecastle-head. They were friction winches, that is, winches operated by lever, and they were bad and all that I could do was to handle them as it was. Any duties that I performed in connection with unloading liquor at sea into small [341] boats was under the direction of Chief Officer Harris and Captain Ford.

On the day that the "Quadra" was seized by the "Shawnee" the tow commenced somewhere around noon-time. In the forenoon I was working below deck but at the time the tow started, at the time that the "Quadra" started under way, under tow of the "Shawnee" I had just come up on deck.

Mr. GREEN.—Q. Were you given any orders by the chief officer at that time? A. Yes, sir.

Q. What were those orders?

A. To keep a lookout on the forecastle-head and watch the "Shawnee" and if anything unusual happened to notify him at once.

Q. Pursuant to those orders where did you station yourself?

A. On the forepart of the forecastle.

Q. Was the "Shawnee" in plain view from there?

(Testimony of R. Gisbourne.)

A. Yes, sir.

Q. Subsequent to that time did you notice anything unusual happening on the "Shawnee"?

A. I did.

Q. What was it?

A. I seen them take a cast of the lead.

Q. What do you mean by that?

A. The sounding machine.

Q. In your experience as an able-bodied seaman over the period of years you have stated, have you had occasion to see many soundings taken?

A. Yes, many.

Q. Have you taken many yourself?

A. I have.

Q. Have you assisted in the taking of a great many? A. Yes, sir.

Q. And you are familiar with sounding machines and their operation, are you? A. Quite familiar.

Q. What activity did you notice on the "Shawnee" in that regard, in connection with taking a sounding?

A. I seen an officer, what appeared to me to be an officer, and a man standing by the [342] sounding machine.

Q. Where was the sounding machine?

A. On the portside of the boat deck.

Q. After you noticed that what did you do?

A. I went right to Mr. Harris and reported.

Q. Where was Mr. Harris?

A. He was right by the bridge.

Q. Where was he—was he on the main deck?

(Testimony of R. Gisbourne.)

A. Yes, sir.

Q. In what room, do you remember?

A. In the captain's room.

Q. In the captain's room? A. Yes.

Q. And that is below the bridge, is it, on the main deck? A. Yes, sir.

Q. Did you tell Mr. Harris what you had seen?

A. I did.

Q. What did Mr. Harris do then?

A. He said, "That will do, Bob; it is two o'clock, that will do."

Q. Do you know where he went? A. No.

On cross-examination, the witness testified as follows:

Ladysmith is about 58 miles from Vancouver. All of my seaman activities have been out of Vancouver; they have been mostly deep-water vessels. I always shipped either as seaman or boatswain. I am pretty familiar with the waterfront of Vancouver; that is where I get my employment. I am pretty well acquainted with the different ships that come in and the different companies that own the different boats. I have been employed mostly on Canadian Government Merchant Marine boats but I have shipped on other boats. One becomes very familiar with the different ships that come in and out of the port. I had only been back from a deep-water trip approximately a month at the time I shipped on the "Quadra." I was not looking for other employment to go out [343] to see during that month, I was home. I did not spend any of

(Testimony of R. Gisbourne.)

that time at all down on the waterfront. I do not know who owns the "Quadra," and had no idea. I had heard of the "Quadra" before; I had not known her but I had heard of her. I had seen the "Malahat" numerous times before that. I did not know what run she was on. At the time I knew her she was carrying lumber. I did not know her after she commenced to carry liquor, I never knew anything about that; I never heard of the "Malahat" or any other boat going out of Vancouver with liquor. I never heard of the "Odena." I never heard of the "Erskine." I only knew the "Coal Harbour" just since I seen her out here; that was the first time. I did not know her in Vancouver. I never heard of the "Jesse" or the "Ironbark." I did hear of the "Kiltuish." The first time I heard of the "Kiltuish" was out here. I never heard of any of those boats plying in and out of the port of Vancouver prior to that time. I never knew the "Principia." I never heard of those boats that were carrying liquor out of Vancouver down the coast. The way I happened to get my job on the "Quadra" was one of the boys told me there was a job on her. That was Cavanaugh. He was a member of the crew and he told me there was an A. B's. job there. I believe he had already signed up. He did not tell me where they were bound for. I have signed on ships without knowing where they were bound for. I was interested in a way to know where they were bound, to know where any ship was bound on which I signed. I

(Testimony of R. Gisbourne.)

did not make any inquiries. I have been shipmates with Cavanaugh once before. I did not inquire of him where the ship was going or what the ship was carrying. I did not ask him how big the ship was, I already knew that. I did not ask him who the captain of the ship was. I didn't make any inquiries at all of Mr. Cavanaugh with reference to the "Quadra," or her cargo, or where she was [344] going, or her captain, or anything, I didn't have the job then. I went on board the "Quadra" seeking employment, and I saw Captain Ford. That was on September 9th, the day before she sailed. I had a conversation with Captain Ford. He told me the "Quadra" was bound for Mexico. He didn't say anything about the cargo. As a rule it is customary to tell the crew where the vessel is going, to what port the vessel is going. He did not inform me how long the passage would be. I didn't ask him. I was interested in knowing that but it is very seldom we ask the captain how long we are going to be gone. As a rule the captain does not know until he completes his voyage. It is not necessary that the captain should give us the probable length of time that they will be gone on a voyage. I signed the articles that day. I came aboard about five o'clock after that. I believe they were loading, I think they were loading that day. I saw what they loaded—liquor. I can't remember whether the hatches were off, or not. When I went aboard at five o'clock I had my personal belongings with me and I took them down to

(Testimony of R. Gisbourne.)

the crew's quarters; the crew's quarters are underneath the forecastle-head. I saw the cargo there then. I did not see anything else but liquor, to my knowledge. As far as I could see she was loaded, practically loaded completely at that time with liquor. The top part was all I could see. All I could see was liquor. That did not arouse any suspicion in my mind, not the slightest bit in the world. At that time I had not known anything about the rum running down to the coast of the United States. None of this liquor was stowed on the main deck, on the upper deck, not in the forepart. At that time I had not gone about the afterpart of the boat. I just put my things forward. When we left the pier or wharf there were some barrels stowed on deck. When we left the hatches were battened down. [345] We had different hours on duty, we were changed. When we started we had four hours on and four hours off. I don't remember what time we left the pier, I can't remember whether it was forenoon or afternoon. When the "Quadra" left the pier she went right to sea. We stopped in the Straits. I don't remember how long we stopped there. I believe we cast anchor there. I could not make any estimate at all of the length of time. When we stopped we were trimming cargo, making it safe for sea. That is all we did. I was helping trim cargo. I was forward most of the time. I fixed up the lines forward, getting ready for sea, and then I went aft and put lines around the barrels and made them

(Testimony of R. Gisbourne.)

fast. That is about all. I was lashing the barrels. At that time I saw the barrels aft. I cannot say that at that time I saw any more of the cargo except the barrels aft than when I first went aboard ship; just the same amount of cargo. All I saw was liquor and I think there were some barrels of oil. I do not think we made any other stop in the Straits except that one. I don't remember. We may have but I don't remember that. I did not see the "Kiltuish" or the "Odena" alongside of us that night. I would say that they were not alongside of us that night. Neither of those vessels, the "Kiltuish" or the "Odena," or "Oden" were alongside of us that night between the hours of nine and eleven o'clock. I will say positively that there were no cases of liquor transferred from either of those vessels to the "Quadra." I will say that positively. On the next day, the 11th of September, I do not remember what my hours on duty were. I did not see the "Kiltuish" on that day. I would say that the "Kiltuish" did not tie up alongside of us that day and discharge a lot of liquor, a number of cases of liquor, to the "Quadra." I am positive of that. The next day, the 12th, that is when we passed the Lightship, or near the Lightship, I did not see the [346] "Kiltuish" again that day. I will say that she did not discharge any liquor on to the "Quadra" on that day.

On the way down I was working around the ship and sacking cargo, sacking liquor, taking liquor out of cases and putting it into sacks. That is the

(Testimony of R. Gisbourne.)

first time I have ever transferred cargo from one character of package to another at sea, that is, I mean in that line. That is a very unusual proceeding. It looked mighty funny to me. I remember when we arrived off the port of San Francisco. When we reached a point opposite the Farrallones we stopped. We were in and around that neighborhood from the time we arrived here until we were seized by the "Shawnee." We may have gone further south but not to my knowledge. I didn't know where she was going to particularly, she was around near that neighborhood. She stuck around outside of the Farallones for the rest of the time. During that time we were sacking liquor. I don't remember the date when the first small boat came along, I just remember the occasion. I helped load liquor on that first boat. I saw the boat. I did not see the name of the boat. I didn't see the name of any boat that came out there. I don't know the name of any small boat that came out there. I could not recognize any of the men that were out there on any of these small boats. I saw the "Malahat." I believe we did tie up alongside of her once and I think we transferred a lot of liquor from the "Malahat" to the "Quadra" and put a lot of empty fuel barrels aboard the "Malahat" from the "Quadra." I saw the "Coal Harbour." I believe we got some liquor from the "Coal Harbour." The "Malahat" and the "Coal Harbour" went away before we were seized but I don't know whether they went home, I don't know where they went, I

(Testimony of R. Gisbourne.)

know they left. I couldn't tell when it was. I couldn't tell whether it was a day or three days. I don't know whether there was a small boat [347] that brought out a bunch of sacks. It did not to my knowledge. We had lots of sacks. I didn't see a new bundle or a new lot of sacks delivered to the "Quadra." I don't know whether they were, or not. I believe there were some that came over from the "Malahat." It was when we were alongside that they put them over. They did not come in the small boat. They were transferred on to the "Malahat" while the "Malahat" and the "Quadra" were tied up together. I couldn't say how many there were, whether there were 25 or 30, or whether there were more than four or five. They were just shoved over. I was on the "Quadra" helping to pull them in. We put them down on the deck of the "Quadra" and left them up on top. I think there were barrels on the forward part of the "Quadra." I did not have the handling of them.

When the "Quadra" was seized by the "Shawnee" I was down below in the hold. I came up from the hold around 12 o'clock. At that time the "Shawnee" was off the port quarter. She was not very far away. I heard the racket and came up; somebody hollered that the revenue cutter was there, I believe. That naturally interested all of us. I was interested at the time in the revenue cutter, and I came up to get my dinner too. I heard one shot from the "Shawnee." As far as my knowledge goes it was only one. That was when

(Testimony of R. Gisbourne.)

I was coming up. I did not pay any attention to whether the "Shawnee" was stationary at that time or as to whether the "Quadra" was stationary at that time. I do not know whether it was in motion or not. I could not say which way we were headed, I did not look. I looked at the "Shawnee." I did not see any land when I came up—I did not look to see any land. I could not say how long it was after I came up before officers from the "Shawnee" came over to the "Quadra." I went on the main deck just abaft the hold. I was [348] on the port side. I don't remember whether the "Shawnee" was opposite us then, or not, I think she was just laying off of us, that is all I know. Something like three or four boat lengths. I don't remember how long we stayed there in that place. I don't remember how long it was after that that the tow-line was attached. I was on duty until five o'clock. I came off duty at 12 o'clock. I believe I stayed on deck until the "Quadra" started to move in tow. Chief Officer Harris called me just when the tow was starting. He called me from the deck, the upper deck, the same deck I was on. He was standing by the bridge, by the captain's cabin. That was on his port side. I went there and received his orders. He told me to go out and watch the operations of the "Shawnee." I went out on the fore-castle-head. I walked along the deck, the deck was clear, partly clear. I did not have to climb over any barrels. There were some barrels there but there was a place to walk across all right. I do not

(Testimony of R. Gisbourne.)

think they were clear across the forward deck. I am not sure but I don't remember of climbing over any barrels. I did not stand on any barrels. I did not have any glasses—I just used the naked eye. I stayed in that position on the forecastle-head until two o'clock. I did not have a watch. Mr. Harris told me it was two o'clock. I relied on him for that. When I went back and told him they were going to take the sounding he said "That will do, Bob, it is two o'clock." I got my dinner at two o'clock or shortly after. When I saw the "Shawnee" taking a sounding I saw some land ahead. I presume that what I saw was the Farallones. They were a long ways ahead. I am not judge of distance. It was more than one or two miles. I could not tell whether it was three miles or ten miles away. It looked like an island to me. I don't remember how many of them. I think there were two or three rocks sticking [349] up. It looked like an island, I don't know how many of them. I did not see Noon Day Buoy to my knowledge. I would not have known it if I did see it. I had never seen the Farallones before that time; that was the first time I had noticed them. I had seen land while we were lying out there, I saw the land but I didn't know what they were, it was my first trip out here. I would not say that the land I had seen was the same land I designated as the Farallones. While we were out there about three weeks we were off and on out further and although

(Testimony of R. Gisbourne.)

I had seen land there I would not be able to recognize whether it was the same land, or not.

At the time I saw them taking the sounding the "Shawnee" was a tow length from the "Quadra." I could not say whether they were three ship lengths apart, or not, because I don't know how long the tow was. I should think it was fully four ship lengths away. I did not hear any orders given on the "Shawnee." I could not hear anything that was said on the "Shawnee." I saw people on the bridge of the "Shawnee" but I could not recognize anybody. I do not recognize Captain Howell here as one of the men on the bridge. I did not see an officer on the bridge that I could recognize here in court to-day. There were two men by the machine and one down on the main deck when this sounding was taken. They let the line over right aft. I saw them drop the lead down. I did not see them bring it up, I did not wait that long. All I saw was the lead dropped over the stern. The men's quarters on the "Quadra" are forward. There is a forecastle-deck. I have taken a good many soundings myself. I don't know that it is not a little unusual to take a sounding with a vessel in tow but I know that it isn't with a ship under way. I have never myself taken a sounding with a ship in tow. I would not say as [350] an experienced sounding machine man that it was a little unusual to take a sounding under those conditions. I think it could be quite easily done. I didn't wait to see the results or what happened after the sounding line was

(Testimony of R. Gisbourne.)

put down; I don't know whether the sounding line was brought up, I didn't see them bring it up and read the sounding. I reported to Chief Officer Harris, and at that time he was right by the bridge, by the captain's room. I think he could see the "Shawnee" from there, that is, he could see the stacks, that was about all he could see. When I made my report to Chief Officer Harris I think he went on the forecastle-head, I seen him going that way. I just seen him start and I looked and went right down below and got my dinner.

On redirect examination, the witness testified as follows:

I had heard of the "Quadra" before I sailed on her, I heard of her a long time ago when she was in the Government service in the capacity of a light-house tender. That was for the Canadian Government. I remember the "Malahat" when she was getting built. Afterwards she was carrying lumber, I think, or general cargo or something. The men that came out to the "Quadra" in the small boats were not dressed like any of the defendants are here in court now, they were just dressed in overalls and caps. I could not see the forward bridge of the "Shawnee" while she was towing the "Quadra." The tow, of course, was from the stern of the "Shawnee." After I had my dinner I came up on deck again and went up forward and stayed there for a while and went below again and came up. After I came up from my dinner I met Sargent,

(Testimony of R. Gisbourne.)

one of the defendants here and one of the members of the crew of the "Quadra." He had a camera and he took a picture. Referring to this small snapshot [351] I recognize myself as the figure in the foreground. I recognize the figures on the bridge. I recognize the picture of Captain Ford. I recognize the pictures of Mr. Austerman and Mr. Patterson of the coast guard officers. When I was on the forecastle-head of the "Quadra" watching the "Shawnee" those men were stationed on the bridge. When Sargent took the snapshot he was just this side of the windlass, just starboard of the windlass. That picture was taken shortly after I came up on deck from having my lunch. I was about half an hour at my lunch.

On recross-examination, the witness testified as follows:

When I signed the shipping articles for the voyage on the "Quadra" and when I saw all the liquor on her I had a pretty good idea that she was not in the Government service then. I could not tell how long it was prior to the time I signed on that she was in the Government service as a lighthouse tender, but it was a long time ago, it might have been anywhere up to seven years before that.

Mr. GREEN.—I offer this photograph in evidence, your Honor, and ask that it be marked our exhibit next in order.

(The photograph was here marked Defendants' Exhibit "F.")

TESTIMONY OF E. SARGENT, FOR DEFENDANTS.

E. SARGENT, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I am one of the defendants in this case. My home is in Vancouver. I have lived in Vancouver three years. I was born in Vancouver. I am a citizen of the British Empire. I was an oiler on the "Quadra." I joined her around about the first of September. I obtained my position through Mr. Mason, the Chief Engineer. The engine-room crew comprised three firemen, two [352] oilers and three engineers. The chief engineer was Mr. Mason; second engineer Mr. Phillips; third engineer Mr. Winterburn. Three firemen: Mr. Hastie, Mr. James, Mr. McClellan. Another oiler besides myself, A. Cavanaugh. At the time I joined the vessel I knew what the cargo consisted of. I signed on for a trip to Mexico and return as per the ship's articles that are in evidence here. At the time that I signed on, or at any other time before I left Vancouver, no one told me that there was any intention on the part of the Captain or anyone else to unload a part of the cargo or all of it before we reached the port of destination. I do not know any of the defendants in this case outside of the Captain, the officers and the crew of the "Quadra." At the time we left Vancouver and until after the arrest in this case I never knew or heard of the defendants Belanger or Quartararo. I remember seeing the Crivello

(Testimony of E. Sargent.)

brothers testifying here on the witness-stand the other day. I never saw them before that. I never saw the defendants Pensotti and McKenzie or Allen and Neilsen. I only saw them in court here. I never took part in the unloading of any of the liquor from the "Quadra." I never was before in a vessel sailing down the west coast of the United States laden with liquor. I have been following the sea since I was 14 years old; I am now 24 years old. I remember the day the "Quadra" was seized by the coast guard cutter "Shawnee." I was working in the engine-room at the time and I heard someone up on top say there was a cutter coming. I thought I would go up and take a look. I went up and had a look. I saw it was a white vessel; I didn't know what it was but I heard someone say it was a cutter, and I saw it was white, and I ran forward and got my camera and thought I would take a picture of it.

Mr. GREEN.—Did you take a photograph of the "Shawnee" at that time? [353]

A. After she came up I did, yes.

Q. I show you a snapshot and ask you if you can identify it.

A. Yes, that is the one I took.

Q. Where were you when you took this photograph? A. On the stern, right on the stern.

Q. What was the "Shawnee" doing at that time?

A. She was just coming around the stern and was coming up like on the port side.

(Testimony of E. Sargent.)

Q. She had just come across the stern and was making the turn? A. Yes, coming around.

Q. Did you see any men on the deck of the "Shawnee"?

A. I saw some men on the deck, yes.

Q. Did you see any men on the bridge?

A. Yes, there were a couple of men on the bridge.

Q. Did you see any men on the flying bridge on top of the pilot-house?

A. No, I never saw any men there.

Q. Were there any men there? A. No.

Q. Was there one man there, or any more than that, at that time?

A. No, there was nobody there.

Q. And that was the time that you took this picture? A. That is the time I took that picture.

Mr. GREEN.—I offer the picture in evidence and ask that it be appropriately marked as our next exhibit.

(Defendants' Exhibit "G.")

Q. I show you an enlarged photograph and ask you if you recognize it?

A. Yes, that is an enlargement of the small one.

Q. An enlargement of the small picture that has just been introduced in evidence? A. Yes.

Mr. GREEN.—I offer the enlargement, if your Honor please, and ask that it be appropriately marked as a defendants' exhibit. [354]

The COURT.—Yes, it will be marked next in order.

(Defendants' Exhibit "H.")

(Testimony of E. Sargent.)

On cross-examination, the witness testified as follows:

I signed on on September 1st. I did not have any talk with Captain Ford then or with Captain McKay. The articles were handed to me by the mate, I think it was the first mate; it was not Mr. Harris, another man was there, I don't know who he was. I don't know whether it was the mate, or not; it might have been the shipping master, I don't know who it was. I think it was an officer of the "Quadra," but I don't know which one it was. I have not the slightest idea. I was alone. Chief Engineer Mason was not with me. I had talked to Mason a couple of days before. When I went to the boat I did not ask for anybody; the first man I saw when I went below was the Chief Engineer. I asked him if there was a chance of a ship. He said he didn't know for sure but asked me to leave my address and he would let me know. He let me know a couple of days after. Then I went back to the ship again and saw him and he told me to start to work. I signed the articles that day in the captain's cabin. I never had any talk with Mason then, he just told me to go to work. I signed the articles a couple of hours after he told me this. Somebody from up above hollered down to me, "Come up and sign the articles," and I went up in response to that call. They did not call my name, they asked if there was anybody down there to sign articles. I was not told where the vessel was bound, nor did I ask, I saw that on the articles. I did not

(Testimony of E. Sargent.)

ask how long approximately we were going to be gone. They were putting cargo on deck, I think some of it was on. It was whiskey, liquor, I suppose. They were loading off and on up till about the 10th. I was on duty [355] all that time, whenever my hours of duty were. I was not out there watching them load. I seen some provisions put on. I cannot say that I saw anything except oil for the ship, provisions for the ship, and whiskey or liquor being put aboard. I did not talk to anybody about the cargo that was being put on. I am pretty well acquainted with the different boats that ply in and out of Vancouver. I know and can recognize when I see them most of the local boats that come in and out of the harbor. I know quite a few of the coastwise boats, I would not say I know them all. I do not know that seamen along the waterfront there can give you a history of pretty near every boat that comes along; I don't associate with many seamen. I keep to myself mostly. As soon as I come off the boat I go up town, I do not stick around the waterfront. I do not associate with anybody that talks about boats; I do not hold any conversation with anybody about boats, that is, very seldom.

On the 12th of October, 1924, I was on duty for a while. My hours on that day were from 6 to 12 in the morning. I went off duty at 12 o'clock. The "Quadra" had been moving that morning off and on. I could not say how long the engines had

(Testimony of E. Sargent.)

been running that morning, they were running for a while and stopped for a while and running again.

By "for a while" I mean for an hour. I do not say they ran for an hour, I would say a short time, anywhere from half an hour to an hour, I suppose, maybe more or less. They were not running when I went off watch, they had stopped. I guess they were stopped close to an hour; I don't know, I would not say. It might have been half an hour, something like that. My principal duties as an oiler are keeping the engines from running hot. I was busy that morning. I did not go up on deck until I heard somebody say there was a cutter. I do not know how much of my time was [356] lost when I heard there was a cutter there; I know I did not bother any more about the watch when I heard there was a cutter. You are not supposed to leave the engine-room on any ship, but I went up anyhow. I disobeyed orders in that respect. The engines were not running, though, when I went up. When I went up on deck I saw some of the ship's crew. I saw Captain Ford on the bridge. I never took particular notice whether anybody was with him. I don't remember whether I saw more than one man on the bridge. I never looked close enough. I was busy looking at the cutter. She was quite a little ways off then, I would not say how far, but she was a little ways off. I did not hear any whistle from the cutter. I heard one shot. I was at the stern of our vessel when I heard that shot. I had went around, I followed the cutter around. I guess

(Testimony of E. Sargent.)

I had been at the stern in the neighborhood of five minutes before I heard the shot. I did not see what they were shooting at, I did not see where the shot went. I saw the shot hit the water. With reference to the "Quadra" I don't know where the shot hit the water, it was ahead of the "Shawnee," that is all I know. I did not see the "C–55" out there. I did not see the "C–55" when the shot hit the water. I would not say that there was a clear vision out that way where the shot hit. There was some wires that went up to the mast there, the after-mast, that was the only thing that obstructed my view. I did not see this small boat you are talking about until after I saw the shot hit the water. The first time I saw the small boat was when it was coming around towards the "Shawnee." That would be on the port side of the "Quadra." It did not come up on the side of the "Quadra," no, it came around the side of the "Shawnee," I think it was on the port side. It was just turning around when I saw it, after they fired the shot, because I didn't know what they were shooting [357] at They were just turning around. I could not say how close it was to the "Shawnee," I could not judge the distance, it was quite a piece away, I think. I believe I took this picture just before they fired the shot. I would not say for sure. I don't know for sure whether it was just before or just after; it was just around about that time; I think it was just before they fired the shot. I did not have the camera with me the first time I came up

(Testimony of E. Sargent.)

from the engine-room. The first time I came up I just took a look at the companion-way coming up from the deck and I saw the white boat and I ran back down the 'tween-decks, along the 'tween-decks and got my camera. I was not very long getting my camera. The white boat was then astern of us, coming toward the stern. I guess about four or five boat lengths from the stern. She was in motion. The "Quadra" was stopped. The "Quadra" may have been stopped for close on to half an hour, I think. I heard a little bit of the conversation between Captain Ford and the captain of the "Shawnee." That conversation was a few minutes, I guess, after I had taken the picture. I would not say how long. The "Shawnee" was slowly coming around on the port side. When that conversation started she was off the port side. I don't know whether she was moving, or not. I could not see the "C–55" tie up alongside of the "Shawnee." She was on the other side. I guess she was on the port side of the "Shawnee." I don't know whether just prior to the word that we received about the cutter being around there the winches were being worked on the "Quadra." I could not tell that down in the engine-room.

On redirect examination, the witness testified as follows: This negative which I am now handed I identify as the negative of the picture I took. [358]

Mr. GREEN.—In order to trace the photograph right from the time of taking down to the present

(Testimony of R. Lovez.)

hour, if the Court please, I would like to have this introduced in evidence as our exhibit.

(The photograph was here marked Defendants' Exhibit "I.")

TESTIMONY OF R. LOVEZ, FOR DEFENDANTS.

R. LOVEZ, a witness called on behalf of defendants, being first duly sworn, testified as follows:

My name is R. Lovez. I reside in San Francisco. I have lived here in San Francisco on and off and have been here since 1896. I am a master mariner. I received my certificate in 1896, and another one in 1913 I think it was. I hold American and British certificates. I have them with me. My British Certificate of Competency was issued by the British Board of Trade on the 19th day of December, 1896. My license as master of steam vessels was issued to me by the United States Department of Commerce, Steamboat Inspection service, on the 13th of August, 1923; that is the second renewal. The licenses are renewed every five years. So I had one in 1913 and one in 1918 and one in 1923. This one issued in 1923 is the third one I received, that is, there would be the original and then two renewals. This might be called the third.

Mr. GREEN.—It may be stipulated at this time that the witness holds an American license to act as master of steam vessels of any gross tons upon the waters of any ocean, it being an unlimited license. And also that the witness is the holder of

(Testimony of R. Lovez.)

a British Board of Trade certificate of competency as master of a foreign-going ship, issued to him on the 19th day of December, 1896, in proper form as such. That is agreed to is it, Mr. Gillis?

Mr. GILLIS.—Yes. [359]

WITNESS.—(Continuing.) Since receiving my license I have served in the International Mercantile Marine, on large vessels of theirs, as master, officer and *master*. I was 17 years with the International Mercantile Marine sailing the Pacific Ocean and the Atlantic, New Zealand, Australia, Mediterranean waters. I also served with the Grace Company of San Francisco for five years as master on voyages to China, Australia, all over—Pacific waters in general. I served with the Pacific Mail; I was loaned to them by the Grace Company. I served as master on the "Colusa," the "Santa Cruz," the "Equador" and the "Venzuela." The International Mercantile Marine was known as the White Star Line and the American Line and the Atlantic Transport Line. I had command of the "Coptic." the "Bovic," the "Romanic," the "Medic" and the "Cretic." I have had 15 years experience in all in commanding large ocean going vessels. I have had 19 years experience as officer and master of large ocean going vessels. I am a member of the Royal Geographic Society, a fellow.

Since the seizure of the steamer "Quadra" in this case I have become acquainted with Mr. Harris, the chief officer of that vessel. He has submitted

(Testimony of R. Lovez.)

to me figures regarding the position of the steamer "Quadra" at the time that the same was seized by the "Shawnee." I have passed upon those figures in my capacity as an expert navigator. I have made investigations and worked out problems along those lines with a view to ascertaining whether or not Mr. Harris' figures were correct. I worked the latitude out and I looked over his vertical angle and his horizontal angle and his bearings and the general condition of the ship as regards deviation and that sort of thing. I have examined the ex-meridian altitude computed by Mr. Harris. I was not present when the observations were taken. I can only [360] take it from data given me. I have examined the ex-meridian altitude computed by Mr. Harris and I have found the figures to be correct, within very, very slight differences. I recognize Defendants' Exhibit "B" in evidence which you now hand me. I saw it about a month ago, I think. Mr. Harris handed that to me. After I had questioned him I made an examination of this paper. I questioned Mr. Harris in regard to the computations placed upon this paper.

Mr. GREEN.—Q. You testified before lunch, Captain, that you had gone over his figures and calculations? A. Yes.

Q. Are the figures and the calculations of Mr. Harris that you examined and went over the ones that are placed on the paper I just showed you?

A. Yes, I approved of them.

Q. Did you examine Mr. Harris' figures relative

(Testimony of R. Lovez.)

to the vertical angle that he took of Point Reyes at the time? A. I did, yes.

Q. Did you notice any omission from the figures that Mr. Harris made regarding his computations on the vertical angle?

A. I noticed he had not taken into consideration the dip, that is, the height of eye.

Q. Did you ascertain from Mr. Harris what kind of a day it was? A. I did.

Q. What did you learn regarding the visibility and clearness of the atmosphere, and the sunlight, on that day?

A. I should say it was a very unusual day, above normal.

Q. If you were placed in the same position that Mr. Harris was that day and had taken a vertical angle of Point Reyes would you, under the conditions of visibility, atmosphere and sunlight, have made a correction for height of eye?

Mr. GILLIS.—To which I object, may it please the Court, on [361] the ground that it is incompetent and immaterial, and assuming facts to which this witness cannot testify.

The COURT.—He is testifying, Mr. Gillis, as an expert from data which already is in evidence. Of course the question assumes that the position, as fixed by Mr. Harris, was the position where the ship actually was. It assumes it to that extent. But it does not assume anything that is not in evidence. Therefore it is a proper question for an expert to answer.

(Testimony of R. Lovez.)

A. I should have made a correction for height of eye and I should have made a correction for no height of eye.

Mr. GREEN.—Q. What do you mean by that?

A. I mean that refraction, as all seamen know, is one of the most uncertain quantities that we have, and there is nobody that can determine it exactly by proving it to his own satisfaction by a set of observations and by getting averages. It is also known that what they call the land refraction, which is caused by the effect of the sun shining on the water raises the object to above the level.

Q. What would be the effect of this refraction in taking a vertical angle of a land object from the sea?

A. The effect would be to reduce the correction to be applied to it.

Q. What would be the effect of it in simple language; what would be the effect on the object of land itself?

A. It would tend to raise the object itself,—the land.

Q. In your opinion, Captain, as a navigator would the refraction offset the correction for height of eye? A. It would, yes, and possibly more.

Q. And if the correction for height of eye had been applied by Mr. Harris under these conditions where would it have placed him, nearer to Point Reyes or farther away? [362]

A. It would have placed him, according to my calculation, about eight miles farther away.

(Testimony of R. Lovez.)

Q. And taking into consideration the height of eye, and also the refraction, is it a fact, in your opinion, that the elimination of the correction for height of eye placed him in about his proper position?

A. Yes, it did. That is the conclusion that we come to. We work both ways and the one that comes nearest to our assumed position we accept that and put the rest of it down to error due to refraction because of abnormality or normality.

Q. And upon the conditions assumed on the day in question did Mr. Harris do the safe thing in omitting for height of eye?

A. I think so. I would have done the same thing under those conditions.

Q. What was the next observation of Mr. Harris' that you checked over? A. His ex-meridian.

Q. Can you tell the jury and the Court the result of your examination of his figures covering his ex-meridian altitude?

A. He gave me an hour angle of 16 minutes from which I found out the correct declination and found my apparent time at Greenwich; he also gave me his longitude, which gave me the apparent time at Greenwich, and my mean time at Greenwich also and consequently corrected the declination for that time and I worked the altitude up with the several corrections necessary to bring it to a true altitude and from that true altitude found my zenith distance from which I deducted the corrected altitude and it gave me the latitude.

(Testimony of R. Lovez.)

Q. What was the result of this computation of yours? A. You mean the latitude itself?

Q. Yes.

A. 37:49:50—two twenty-seconds difference from Mr. Harris. [363]

Q. In your opinion, Captain, did Mr. Harris use the correct method of working his ex-meridian altitude? A. He used the short method, yes.

Q. And you have worked it out by other methods, have you?

A. I worked it out by short methods, several methods.

Q. By other methods also? A. Yes.

Q. How many different methods did you work it out by?

A. I worked it out by two other methods, two substantially good methods.

Q. Were the results of your calculations by these other methods substantially different from the result obtained by Mr. Harris?

A. Only twenty seconds.

Q. How much of a difference in distance would that be? A. About one-fifth of a mile.

Q. Were those all of the calculations you did in going over his ex-meridian altitude?

A. No. I also plotted his bearings on the chart which were taken and I also checked up his horiontal angle and found out just where his horizontal angle would cut his latitude, which would give him his position—his longitude.

Q. Can you explain at length exactly what you

(Testimony of R. Lovez.)

did in checking up these other observations of Mr. Harris?

A. There are several methods of checking up the horizontal angle. You can check a horizontal angle up by the angle given, the distance between the two points; the distance between the two points is half of the distance, of that distance; then you take the angle itself as a course; half the distance from the distance claimed in the departure column gives you the distance that you ought to place on the chart to form the circle that will cut the angles and cut the points taken and also cut your position of latitude which will be a longitude.

Q. In your opinion, Captain, is it possible for a navigator to [364] fake an ex-meridian altitude of the sun?

A. I don't think so. It would take him a long time to do it.

Q. Could it be done in a length of time?

A. No. It would take him several hours to do it.

Q. I mean in a length of time?

A. Yes, in two or three hours he probably could.

Q. In the length of time stated in the evidence here could Mr. Harris have faked that?

A. No, he could not.

Q. Is there any way in which you work that out from the assumed longitude furnished you by Mr. Harris and the ex-meridian altitude that you can say that he must have been correct?

A. Yes, that can be worked.

Q. Have you any figures on that in your book?

(Testimony of R. Lovez.)

A. I have. The latitude that he took even as an ex-meridian can be worked out as a longitude observation, being a low altitude.

Q. Please explain that to the Court.

A. Here it is, Mr. Green.

Q. Will you please explain it to the Court and the jury?

A. Your Honor, and Gentlemen of the Jury: The system of ascertaining the longitude by observation, with an assumed latitude, knowing the hour angle and the declination of the longitude by account—we know those, although they are assumed—in that way we work out an ordinary chronometer sight, which gives us a longitude. By that hour angle that we obtain from the longitude, that is, the apparent time at ship, we ascertain a bearing of the sun at that time. The sun in this particular instance bore south 6 east, close to the meridian. From certain tables we have, Captain Leckey's tables, we find out by the latitude a correction, and also table B we find out the correction, we arrive at plus or minus corrections—two plus would give you a plus correction; that is the error due to one mile [365] difference of latitude. Every mile that the latitude is out is equal to 12–22. In this instance the assumed latitude was 37–49. We found out by amplitude that the latitude was 37–50. It was one mile then to the north. The latitude by account was one mile south of the true latitude. So in applying that correction to the longitude obtained by this problem we applied the correction

(Testimony of R. Lovez.)

from the north to the east, because it is the opposite to the bearing of the sun at that time, which gives you a longitude at that time of 123-23-18 west corrected longitude. So we have the latitude by ex-meridian and we have the corrected longitude at that time. That gives you a fix of that position.

Q. Where does that calculation of yours fix the position of the "Quadra" upon the chart?

The COURT.—Here is a red pencil. You had better mark that in a different color, so that we can differentiate it from the others?

A. It is about there.

Mr. GREEN.—I have marked the position in red pencil surrounding it by a circle, and marked it at the end of a line leading to it "Position L."

Q. Captain, is the position you just fix upon the chart the correct position of the "Quadra" at the time and place in question, according to your calculations? A. Yes.

Q. How many miles from the North Farallones is that position?

A. From the North Farallones, about 13.6.

Q. 13.6 of what? A. Miles.

Q. Nautical miles? A. Nautical miles, yes.

Q. And in what direction from the North Farallones? A. North 75 west, true.

Q. The position of the ship from the North Farallones? A. From the North Farallones.

Q. I do not understand that?

A. This is the North [366] Farallones, is it not?

(Testimony of R. Lovez.)

Q. Yes. A. North 75 west.

Q. What position would it be on here?

A. Magnetic.

Q. Bring it down to here.

A. West half south magnetic.

Q. From the calculation just recited by you, Captain, do you say, in your opinion as an expert navigator, that the position you have just plotted upon the chart as being the position of the steamer at the time and place in question must have been its true position?

A. I should say so, yes, as near as you could get it.

Q. Did you go over Mr. Harris' figures in computing his horizontal angle? A. I did.

Q. Did you find them to be correct? A. Yes.

Q. What is your opinion, Captain, regarding the reliability of one sounding?

A. I should say one sounding is worse than useless, myself. If soundings are made, they should take lines of soundings.

Q. What is your opinion, Captain, of the head-on bearing?

A. I think it is accurate if it is properly taken, within a very small degree—would not be more than a degree out, anyway.

Q. How much of a difference in position would a degree out in the bearing make?

A. It would make five miles difference in 300.

Q. In your opinion, would the position of a mast

(Testimony of R. Lovez.)

between the eye of the observer and the bow of the vessel make any more difference than a degree?

A. No. I should not think so, if it was carefully taken by looking at both sides of the mast, at the same time the object did not come over on either side too much—pretty well located.

Q. Would you mind looking at this chart for a moment, Captain? Calling your attention to the sounding marked "44 fathoms," which [367] has been heretofore encircled and marked "Position Q," how great an area of the ocean's bottom is represented by that sounding 44 on the chart?

A. I think it would take about six soundings to the square mile, something like that. I never surveyed, myself, but that is the impression I have got, the soundings per square mile.

Q. Can you tell, by the use of your dividers, how far that sounding 44 extends to the westward on that chart from the mark 44?

A. To the westward, yes. Where do you want it from, from this meridian here?

Q. No, from the position that is given on the chart, 44. A. From here?

Q. No, from the mark 44, itself. A. Yes.

Q. How far would you say, in your opinion as a navigator, that depth of 44 fathoms extended to the westward? Would it only be, in other words, exactly 44 at exactly that point?

A. No, it might be here, it might be there, and it might be here. Here is 44 over here, and 44 over here.

(Testimony of R. Lovez.)

Q. I know, but calling your attention particularly to the mark 44 surrounded by the circle and marked with the letter "Q," how far, in your opinion, would that sounding extend on the floor of the ocean in that locality?

A. It might have extended for a mile and a half or a mile. The bottom would come up like that and fall down.

The COURT.—What is the depth of water shown by that chart at the place where Mr. Harris fixed the position of the "Quadra"?

Mr. GILLIS.—About 190 fathoms.

The COURT.—Would it be possible for the officers of the "Shawnee" to make a mistake of 150 fathoms?

A. I should not think so.

Mr. GREEN.—Q. That is providing that they took the sounding— [368]

A. (Interrupting.) Took the sounding and got the bottom, no.

Q. That is provided that they took the sounding at the place that they say they took it?

A. They could not have got that sounding.

The COURT.—What I had in mind was this, if they had taken a sounding at the place where the first officer fixes the position of the "Quadra," and correctly taken the sounding,—now, that shows in the neighborhood of 190 fathoms of water?

A. Yes, something like that.

Q. Now, their figures show, the tube that was

(Testimony of R. Lovez.)

produced here, that is, the pressure tube, at the point indicated, showed 44 fathoms? A. Yes.

Q. Would it be possible for competent officers to make such a mistake as that?

A. Well, not with the intervening distance between the two—if they got a sounding they did not get it where the "Quadra" was. That is the only conclusion I could come to.

Q. That does not quite answer the question. The question is, if they took the sounding at the place at the time they said they did, at the time when she was laid alongside, that is, the "Shawnee" was laid alongside, and the "Quadra" was at the position as fixed by the chief officer, is it possible that they could have got a sounding of 44 fathoms?

A. If they took a sounding in that position they must have got it.

Q. I do not think I understand.

A. If they took a sounding when in that position they must have got that sounding.

Q. That is not quite what I had in mind. Would it be possible for a competent officer to make a mistake in a sounding with a sounding machine containing the usual glass, ground glass, or chemically-treated glass, would it be possible for him to make a difference of practically 150 fathoms? [369]

A. No, I should not think so; absolutely no. He might make an error of a fathom or so by a difference of low water and high water.

Mr. GREEN.—Q. Captain, in your opinion is it

(Testimony of R. Lovez.)

feasible to take soundings when the ship is under way? A. Yes.

Q. Have you ever done so?

A. I have taken them at 21 knots.

Q. Is it, in your opinion, possible to take a sounding when a ship is towing another?

A. Yes, it is, short soundings; it would not be advisable to take a very deep sounding, but a sounding of 44 fathoms could be easily taken.

Q. I suppose, Captain, you have had a great deal of experience with sextants? A. I have.

Q. Is it at all an unusual thing to find a sextant without an index error?

A. Very seldom you find one with an index error, because the officers always keep them adjusted.

Q. Then if the officer who owns the sextant is competent to adjust it properly, no index error will be apparent? A. No.

Q. If there is only a 10-second measurement upon the sextant, is it possible to take a 5-second reading?

A. Yes, it is on a good sextant, a well-cut sextant.

Q. How is that done?

A. Well, there are sextants and sextants; there are good sextants and bad sextants.

Q. On a good one how is it then done?

A. It is done by reading where it cuts on the vernier.

On cross-examination the witness testified as follows:

(Testimony of R. Lovez.)

All of the opinions that I have given with reference to the location of the "Quadra" have been based absolutely upon the figures that Mr. Harris gave me. [370]

Mr. GILLIS.—Q. Captain, will you give the difference between the apparent time on October 12 at 123½ west longitude and the mean time on October 12 at 120 west longitude?

A. You want the difference between what?

Q. I want the difference between the apparent time on October 12 at 123½ west longitude and mean time on the same day at 120 west longitude. Do you want some paper, Captain?

A. No. Do you want Greenwich mean time?

Q. No, the difference between the apparent time and 123½ west longitude and the mean time at 120 west longitude. A. On October 12?

Q. Yes.

A. In fact, you want a corrected time for mean time—is that what you want to do?

Q. I want to get the difference.

A. I do not quite get your point, Mr. Gillis.

Q. I will put the question again, and possibly you will get it. I want the difference between the apparent time on October 12 at 123½ west longitude. A. Yes.

Q. And mean time October 12 at 120 west longitude? A. 120?

Q. Yes. A. 48 seconds.

Q. 48 seconds? A. Yes.

Q. Will you step down to the chart with your

(Testimony of R. Lovez.)

dividers, Captain, and measure the distance between Noonday Rock and the northernmost island of the North Farallones? A. About 3.3 miles.

Q. Now, will you take your dividers and measure the distance between Noonday Rock and the southernmost island of the North Farallones?

A. This one here?

Q. No, the southernmost island of the North Farallone Group. A. 3.9 miles.

Q. Now, will you please take the ruler and shape the course of [371] the "Quadra" from the position you said she was in to a point one mile abeam of the southernmost island of the North Farallone Group?

A. Yes. The course from where she was, you say?

Q. Yes. A. You mean magnetic?

Q. Yes, magnetic. A. East one quarter south.

WITNESS.—(Continuing.) I was employed in this case by Mr. Green. He is the only man that I made arrangements with. I am looking to him for my compensation. I think I have been in conversation with him for six weeks or such a matter, just talking to him. I have not received my compensation for that work yet, that is, I have had a little bit, to keep me going.

STIPULATION.

Mr. GREEN.—I would like to ask if the request I made yesterday has been complied with as to the

(Testimony of Jacob Schybinger.)

sample sack of liquor that was taken from the "C–55," if that sack has been weighed?

Mr. GILLIS.—We have weighed them all.

Mr. GREEN.—The figures submitted by the United States Attorney on the weight of the load of the liquor on the motor-boat "C–55" at the time of seizure of 3,304 pounds is acceptable to the defense. That is stipulated to be the weight of the cargo of liquor on board the 'C–55" at that time?

Mr. GILLIS.—So stipulated. [372]

TESTIMONY OF JACOB SCHYBINGER, FOR DEFENDANTS.

JACOB SCHYBINGER, a witness called on behalf of defendants, being first duly sworn, testified as follows:

At the present time my occupation is first-class fireman, U. S. Navy. I am stationed on the receiving ship. The receiving ship station is Goat Island, in San Francisco Bay. On the 12th of October, 1924, I was first-class water tender, U. S. coast guard service, attached to the U. S. coast guard cutter, "Shawnee." I had been attached to the "Shawnee" since the 1st of February, 1924. I left the coast guard service on the 16 of November, 1924. I was honorably discharged at that time, my term of enlistment terminated then. I was on the "Shawnee" on the day that the "Quadra" was seized by the "Shawnee." I recognize the vessel shown in this photograph, Defendants' Exhibit "H." That photograph was

(Testimony of Jacob Schybinger.)

taken at the time the coast guard cutter "Shawnee" was rounding the stern of the "Quadra." I was standing on the starboard side of the "Shawnee" near the entrance to the mess hall at that time. I had come off watch at eight o'clock in the morning. I went on watch again at four o'clock in the afternoon. The "Shawnee" commenced towing the "Quadra" at about 12:35. That is the time as I recollect it. It was shortly after dinner. The first dinner that day was about 11:20; the second dinner was about 12 or 12:05, or something like that. I had the first dinner. From those facts I base my opinion that the tow started about 25 minutes to one, or half past twelve, or some time around there. After the tow started I was all over the ship, I was on the stern end, around the taffrail. I was there until four o'clock in the afternoon when I went on watch. I was just looking like the rest of the crew, watching. I know Ensign Morse. I recognize him as the gentleman who testified here for the Government. I know the quartermaster that testified here for [373] the Government with respect to taking a sounding on board the "Shawnee." While the tow was under way and I was at the stern of the "Shawnee" I saw both of those gentlemen. Ensign Morse was on the hurricane deck, the boat deck. The sounding machine on the "Shawnee" is on the port side of the hurricane deck, to the rear of the boat. I could see that position from where I was standing at that time. I saw Ensign Morse and the quarter-

(Testimony of Jacob Schybinger.)

master who has testified to taking a sounding in the neighborhood of the sounding machine while the tow was under way. I seen them taking a sounding. The tow was under way at that time pretty near a good hour and a half. As I have said, I have been attached to the "Shawnee" since the 1st of February, 1924, cruising in these waters three or four times a month.

Mr. GREEN.—Q. In your opinion, at the time the "Shawnee" seized the "Quadra" how far away were the North Farallone Rocks?

Mr. GILLIS.—Just a moment. I don't know that this man has proven himself an expert in distance, or qualified in navigation.

The COURT.—What good would his opinion be, Mr. Green, in view of the testimony on both sides with regard to the methods in which the position of the ship was located? What good would anybody's opinion be?

Mr. GREEN.—It throws some light on it, your Honor.

The COURT.—No, it could not possibly. I will sustain the objection.

Mr. GREEN.—Exception, if the Court please. For the purpose of the record I would like to ask this question, your Honor:

Q. From your experience at sea can you tell whether or not at the time the "Shawnee" seized the "Quadra" the North Farallone Rocks were more or less than 5.7 miles away?

(Testimony of Jacob Schybinger.)

Mr. GILLIS.—To which I object. The witness has not been qualified, as I said before. [374]

The COURT.—Oh, I think I will let him answer it. A. Yes, lots more.

Mr. GREEN.—Q. How far would you say?

A. A good 15 or 16 miles.

Q. That is the way it looked to you?

A. That is the way it looked to me and to everybody else on there of the crew.

WITNESS.—(Continuing.) When I went on watch at four o'clock the North Farallone Islands were about off our port beam, a little past off the port beam when I went on watch at five minutes of four.

On cross-examination, the witness testified as follows:

My watch was from four o'clock to eight o'clock, that is, from four o'clock in the morning to eight o'clock in the morning and from four o'clock in the afternoon to eight o'clock in the evening. Those were the two watches in the 24 that I was on duty. I had those watches since Saturday. We left Saturday, the day before, so that on October 11th and October 12th those were the two watches that I had. On my first watch that morning the "Shawnee" was in Drake's Bay. They pulled out shortly after I came off watch. They were there all of the time while I was on watch. Shortly after eight o'clock, when I came upstairs, they pulled out of Drakes Bay. Probably ten or fifteen minutes after I came upstairs, or something like that, they pulled out of

(Testimony of Jacob Schybinger.)

Drakes Bay. As water-tender I have charge of the fire-room on that watch. I give water to the boilers and keep up the steam; I have a fireman there doing the work keeping up the steam. The fireman is under me; he takes my orders with reference to that. The fireman on my four to eight watch was a fellow named Healy; I don't know his first name. I don't think he had been on the "Shawnee" long. He is out of the service now. I think he came on [375] the "Shawnee" in about July or August or some time around there. After I came off watch at eight o'clock I had breakfast right away; then I walked around the deck, the main deck, passing the time away. The main deck is the deck below the boat deck. I call it the main deck. The other one I call the hurricane deck, and the forecastle-deck. The one higher up where the boats are I call the hurricane deck, and the one straight forward I would call that the forecastle-deck. I was on the main deck pretty nearly all the rest of the morning until I had dinner. I only took about fifteen minutes for breakfast, ten or fifteen minutes, and then I came right out on deck. When I came up on deck we were heading out to sea. At the time I came up after breakfast we had not gotten very far out, a short distance out, probably two or three miles. At about 8:30 I seen a whaler. We were about eight miles from the whaler. The "Shawnee" kept on going right out to sea. Quite a while after that I saw the whaler again. You know I didn't keep my eye on the whaler for the

(Testimony of Jacob Schybinger.)

whole morning, just once in a while I happened to notice it. I should judge it was about an hour afterwards. I could not tell what course or approximately what course the "Shawnee" took when I came up from breakfast, I was not in the wheelhouse. I saw the land around, we were only a couple of miles from it. We were going straight out to sea; I would not say straight west, right straight out from Point Reyes, right straight out from there. That would be about west, yes, sir. The whaler was on our port beam. We saw the "Principio" that morning. That was quite a while after we passed the whaler, about two hours afterwards. We had come within four or five miles of the whaler. The "Shawnee" did not stop, she went right straight to the "Principio"; we did not stop, we went right by. We went by full speed, we went after a little boat. I don't know whether the "Principio" [376] was anchored on the Cordell Banks. I know where the Cordell Banks are all right but I don't know whether she was anchored there. The "Principio" was about, I should judge, 18 or 20 miles out from Point Reyes, straight out from there. I did not notice whether the "Principio" had her anchor chains out. I believe she did, though, I believe she was anchored. I did not see her move. Her head was pointing north. We went about half a mile past the "Principio." We had been about two hours getting out there, pretty near two hours. That would be about an hour after we passed the whaler. When we passed the

(Testimony of Jacob Schybinger.)

whaler we were past the point then, a little past the point, a little past Point Reyes. We were two miles or a mile and a half from land. The "Shawnee" a little later turned and came back toward land and went on about a mile, approximately a mile, a short distance from the "Principio." We picked up the little boat there. We were there about five minutes. I don't know what boat that was, I didn't pay any attention to it. I saw the boat but I don't know the number or the name of it. I was not interested to see what the boat was. The little boat came alongside of the "Shawnee." Then some of the officers of the "Shawnee" went aboard the little boat. They looked her over to see if there was any booze on her. Two officers from the "Shawnee" went on to the small boat and looked her over and then the two men in the small boat came off and went on to the "Shawnee" and talked with the captain and then went back again. That all consumed about five minutes. That is my best judgment, that that took about five minutes. Then the "Shawnee" came back to the "Principio" and stopped there for a few minutes, I judge, and then went south. I could not say that she went directly south, I am no navigator, but what I mean is she went south. I could see Point Reyes from there. I judged from Point Reyes that we [377] went south. We kept that course about an hour. After we left the "Principio," shortly after, I should say about an hour after, we came alongside of the "Quadra." I have been on the main deck all that time. I was

(Testimony of Jacob Schybinger.)

aft. Most of the crew were back there. I remember Dobson, Healy, Williams, Stokes. I can't think of one of the guy's names who was there, he was chief yeoman, I can't think of his name right now. I think he was the only chief yeoman there. I cannot recall any other names now; if I thought long enough I could all right. We were not standing back aft there steady, we were walking up and back on the main deck. Aft on the main deck and forward toward the mess-hall, the entrance to the mess-hall. We were just passing the time walking up and back. Dobson is not on the "Shawnee" now. I seen him the other day, he is in town here. I do not know what he is doing. I do not know if Healy is still with the "Shawnee." I heard somebody say he was discharged at his own request. That is all I know about it. All of these men were there when we came upon the "Quadra"—the whole crew was there. I mean by that except the men on watch, the men who were down below. Four men are supposed to have been on watch. I did not count the number of men who were on deck with me, but I would say nine—nine or ten, maybe more. When I first saw the "Quadra" I was near the mess-hall. We speeded up full speed and from the vibration of the ship I knew there was something wrong and we all rushed out on deck on the starboard side. I had only been eating about five minutes when I felt this sudden vibration. I went to lunch somewhere around 11:20. I went back and finished my dinner later on. I finished it just as

(Testimony of Jacob Schybinger.)

soon as they went around the stern of the "Quadra" and they fired a shot at that little boat. I was eating when the shot was fired. I was eating, they slowed up for about maybe a minute, and then full [378] speed again, they went after the little boat, and just as soon as I got out on deck they fired a shot at the little boat that got away from the "Quadra." Just as soon as they fired the shot at the little boat I went right back and finished my dinner. Dobson was on duty as water-tender at 12 o'clock. There was more than one water-tender. There was only one on duty at a watch, one water-tender on each watch. The water-tender sees everybody in the engine-room, he sees the fireman, he sees the oiler, he sees the engineer. When I went off duty at eight o'clock I cannot think of the name of the man who relieved me as water-tender, I don't just think of his name now. I know him if I see him but I can't think of his name right now. I did not pay any attention to who relieved the oiler. I don't remember who relieved the fireman. The engineer was relieved by Bohen, machinist's mate, first class. Mr. Williams was on duty as engineer when I was on duty from four to eight. The fireman was Healy. I don't remember the name of the oiler. Dobson was relieved by me when I went on duty at four o'clock as water-tender. Healy went on duty as fireman and Williams as engineer. When I went back that time to finish my dinner I was there only a few minutes, I made it short. On that shot everybody forgot to

(Testimony of Jacob Schybinger.)

eat. I would say I was not there more than three or four minutes. After that I went on deck and went back aft. The tow-line was not attached then. When I went out from the mess-hall and went back aft that little boat was coming alongside, the "C–55." It was probably an hour after that that the tow-line was attached. The "C–55" came on the port side. I went along the port side to look at it. I did not stay there. I went astern. There were lots of them there then. My fireman was there, Healy. And Dobson was there for a minute —he was right there, then, because he had to go on watch, 12 to 4 watch. [379] There were so many newcomers on there you could hardly think of their names. I could if I saw them. I cannot remember the name of any other member of the crew that was with me then. I saw the tow-line attached. I was then back aft. I was not helping; I was looking on. I did not stay there from that time until we got clear down past the Farallones, I was there until I went on watch at four o'clock. I don't know the position of the "Shawnee" and the "Quadra" at about four o'clock; I was not up at the wheel-house. The Farallones were about off the beam then. That was the North Farallones. I could not say how far we were away from the North Farallones. It was all of four or five miles, anyway, about four or five miles on the port beam. It was about two hours before we passed the North Farallones that I saw the sounding taken. Ensign Morse took that sounding. He was by the sound-

(Testimony of Jacob Schybinger.)

ing-machine. There were two seamen with him. I don't remember their names, I don't know. I would recognize them if I saw them. I recognize one of them in court now. He is right back of Ensign Austerman. He was not standing by, he was standing by the lead; out by the taffrail where the lead goes over the side; he is a quartermaster, he was not one of the men who stood by the sounding-machine. I refer to Rothe. The seamen that I saw standing by the machine are not here. I saw Rothe, the quartermaster, Ensign Morse, and the two seamen. There were lots standing around there, looking around. I saw Rothe put the lead in the glass tube and attach it and drop it over the side. I watched him do that. I was leaning against the taffrail, a short distance from him, four or five feet. When the line came to him there astern he dropped it over the side. He attached the glass tube to the lead and put the line to it and dropped it over the side. I am not a seaman. I don't *know a* sounding machine works, although I know when a sounding is taken. [380] I saw the line dropped, put over the rail. The rail is about four or five feet high. When he dropped it over the rail the line was paid out as the lead pulled it down. After it had apparently at last reached bottom it was pulled up again; of course I don't know that it reached bottom; I wasn't down there to see it. It was pulled up by hand. Two seamen pulled it up. They were standing by the sounding machine. They were winding up the

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(Testimony of Jacob Schybinger.)

sounding machine and pulling the lead up that way. Rothe received the lead. I guess he detached the glass tube. There were a few more standing around there. I don't know if anyone was helping him, there were a couple of seamen standing around there. He took the glass tube off and took it up to the chart-house and had it sealed, I guess. He took it directly up to the wheel-house. I was not up there. From where I was I couldn't see if he gave it to anybody up there. The last I saw of him he was taking it up to the wheel-house, taking it away. That is the last I seen of it. I did not see them taking any more soundings coming in. I don't know that they took another one shortly after that. That is the only one I seen taken. If there was another one taken I didn't see it. The "Quadra" was in motion when I saw her. She was headed north; I don't know about due north, I know she was headed that way. As near as I could tell her nose was pointed north. She was just getting straightened out. That is the way I looked at it. What I mean by getting straightened out is getting into the sea, or into the tide; she was just under way for a short time, maybe a few minutes, just to get straightened out; that is all I noticed. When I noticed her she was making a turn and she stopped, a turn toward the north. She was turning from the east, coming around east. Her nose was pointing east, and I saw her turning from the east; she headed north and stopped. When I [381] saw her nose pointing

(Testimony of Jacob Schybinger.)

east we were coming right around her, right around her stern when I seen her. She turned from the east to the north and stopped. And she did that when we were right astern, when we went right around astern of her. The "Shawnee" was in motion; the "Shawnee" was moving twice as fast as the "Quadra," three times. We were going full speed there when we were astern of her. We were going full speed and stopped the engines, and right full speed again. I mean she stopped the engines and then started them again, full speed again. We swung around astern of her full speed and went right by her. I have been in court here once this week. First Officer Harris was on the stand then, I think. That is the only time I have been here this week. I was here a couple of times last week. Captain Howell was on the stand then; also Mr. Morse; also Rothe, the quartermaster; also a few more, but their names I do not know.

On redirect examination, the witness testified as follows:

Mr. GREEN.—Q. Who did you first talk to about this matter?

A. To a first lieutenant in the navy.

Q. What was the occasion when you talked to him about it?

Mr. GILLIS.—I think that is immaterial and not proper redirect examination.

The COURT.—There was nothing asked him on cross-examination with regard to how he happened to be here.

(Testimony of Jacob Schybinger.)

Mr. GREEN.—I will withdraw it, your Honor. That is all. [382]

TESTIMONY OF H. W. KLEIN, FOR DEFENDANTS.

H. W. KLEIN, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I live at the Union League Club, San Francisco. I am assistant general freight agent for the Southern Pacific Company, headquarters at San Francisco. I am acquainted with Vincent Quartararo, a defendant in this case. I am a visitor at his home. I know his wife, his whole family. I know Mr. A. A. Bertrand, who is the brother-in-law of Mr. Quartararo. I remember the 3d of September, 1924, with relation to that acquaintance. On the 3d of September, 1924, I attended Mr. Bertrand's wedding at the Cliff House in San Francisco. There were present Mr. Bertrand, his bride, myself and my wife, Vincent Quartararo, this defendant. I was there from approximately eight o'clock until shortly after midnight. I know for a fact absolutely that Mr. Quartararo was there all of that time. I saw Mr. Quartararo on the 4th day of September, the following day. The bride at that wedding was Miss Augustine Trapani, Mr. Quartararo's sister-in-law. I was at Mr. Quartararo's home on the 4th of September. Myself and wife were there, Mr. Vincent Quartararo and his wife, the two Bertrand boys, Miss Bertrand and

(Testimony of H. W. Klein.)

Miss Michelini Trepani, and Mr. Quartararo's children. Miss Michelini Trapani is a sister of the bride I just mentioned. All of these persons were there on that date. Myself and wife usually spent Sunday evenings at Mr. Quartararo's home; also quite frequently on Wednesday evenings. On those evenings Mr. Quartararo would be present, except when he would be out of the city. [383]

TESTIMONY OF ED. KUPFER, FOR DEFENDANTS.

ED. KUPFER, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I live at 1700 Jones street, San Francisco. I am a pork packer. My place of business is 1331 Pacific street. I know Vincent Quartararo, the defendant. I remember seeing him on Friday, August 29th, at the Elks Club. Gus Bertrand was there at that time. Mr. Stewart might have been there. I saw him on that day between 12 and 1 o'clock. I cannot say that I saw him there in the evening. I remember that I had a conversation with him on that occasion. It was regarding a dinner to be held at the Cliff House on the following night. On the following night I saw him at the Cliff House. That was the night of Saturday, August 30, 1924. In my party were Mr. Quartararo and his wife, Mr. and Mrs. Bertrand, Miss Trapani and myself. By "Mr. Quartararo," I mean Vincent Quartararo, one of the defendants

(Testimony of Ed. Kupfer.)

in this case. Mr. Roberts was the proprietor of the Cliff House. I received the bill that night and I told the head waiter to sign my name across the face of the bill and send it to Ruthjens & Co. I recognize this as the bill, with my name endorsed across it.

Mr. COGHLAN.—I offer this in evidence, if your Honor please, to be appropriately marked for the defendant Quartararo.

(The paper was here marked Defendants' Exhibit "J."

On cross-examination, the witness testified as follows:

I have known Mr. Quartararo quite a while, I would say maybe twenty years. We were practically born and raised together in North Beach. We lived about four or five blocks apart. I have been quite friendly with him during that time, visited back and forth between the families. [384]

On redirect examination, the witness testified as follows:

Mr. COGHLAN.—There is one matter, your Honor, I overlooked, and I would like to ask the witness about it.

WITNESS.—(Continuing.) I visited Mr. Quartararo's house during August and September of 1924. I also, during August and September of 1924, saw him quite frequently at the Elks Club. That would be during the day time, and it would be during the meeting on Friday night. I went away

(Testimony of Ed. Kupfer.)

to Richardson's Springs for two weeks, on the 4th of September. In the meantime I knew they were going to Catalina on the excursion of the Elks.

TESTIMONY OF U. F. STEWART, FOR DEFENDANTS.

U. F. STEWART, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I live at the Elks Club. I am the financial secretary; we have a bond drive there, and I am handling that bond drive for our new building. I am acquainted with Vincent Quartararo, the defendant. I remember Friday, August 29th of last year. I saw Mr. Quartararo at lunch-time on August 29th. I do not remember seeing him at night-time. Present at that lunch on August 29th was Mr. Bertrand; I remember that he was there. Mr. Kupfer is always there for lunch. I remember Friday, September 12, 1924, and I saw Vincent Quartararo on that date. That was also at the club. I saw him at lunch-time, and I saw him at night, too. There were quite a few present then; Mr. Sheehan, Mr. Goldsmith, Mr. Mangin and Mr. Simons. The meetings of the Elks are on Friday night. Mr. Quartararo is quite regular in his attendance at the meetings on Friday nights. [385]

TESTIMONY OF R. GOLDSMITH, FOR DEFENDANTS.

R. GOLDSMITH, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I live at 638 20th Avenue, San Fransico. I am in the insurance brokerage business. I am acquainted with Vincent Quartararo. I recall Sunday, August 31, 1924. On that day I was at Napa Soda Springs, at the Elks outing. I went up the day before, on Saturday, August 30th. On Sunday, August 31, 1924, I saw Vincent Quartararo at the Napa Soda Springs. He was with his wife. There were also Captain Lemmon, Captain Casey, Mr. Stewart, Mr. Simons. Mrs. Goldsmith, my wife, was along with me. We went up in an automobile. I went to the springs in my own automobile, but I came back in Mr. Quartararo's automobile. The reason far that was that some unknown person unlawfully took my automobile up at Napa Soda Springs, and so I returned with Mr. Quartararo. We did not arrive in San Francisco until after nine o'clock that evening. He drove me to my home, arriving there sometime after nine o'clock. It was on Monday, September 1, that we returned. I know that when I got up on Sunday morning, that Mr. Quartararo was there. He was there, to my knowledge, all day Monday, the 1st of September.

TESTIMONY OF MRS. RUTH GOLDSMITH, FOR DEFENDANTS.

Mrs. RUTH GOLDSMITH, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I was at Napa Soda Springs on Sunday, August 31, 1924. My husband and myself went there on Saturday evening, August 30. The next day, Sunday, August 31, I was at Napa Soda Springs. I don't remember seeing Vincent Quartararo until Monday, there were so many there. I did see him on Monday, September 1. My husband and I went to the springs in our automobile, and we [386] lost it there, and came back to San Francisco with Mr. Quartararo and his wife in his automobille. It was after nine o'clock Monday night that we arrived home.

TESTIMONY OF J. J. FLATLEY, FOR DEFENDANTS.

J. J. FLATLEY, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I reside at 1020 Union street. I am a merchandise broker. I am acquainted with Vincent Quartararo. I remember seeing him on Sunday, August 31, 1924, at Jackson Napa Soda Springs, attending the annual Elks auto outing. I was the chairman of the committee that organized that outing. I saw him there from around the noon hour, as I remem-

(Testimony of J. J. Flatley.)

ber it, up until Monday afternoon, from the noon hour until Monday afternoon about three or four o'clock. I saw him leaving with the Goldsmiths.

TESTIMONY OF JOHN J. CONNOLLY, FOR DEFENDANTS.

JOHN J. CONNOLLY, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I know Vincent Quartararo. I remember seeing the defendant Quartararo on Friday, September 5, 1924, at the Elks Club. There were also present Mr. Goldsmith, Mr. Dowden, Mr. Pratt, Mr. O'Hare, and Mr. Marks. I remember the occasion very distinctly, we were playing cards that evening. I am a newspaper reporter.

TESTIMONY OF MRS. ALICE CONNOLLY, FOR DEFENDANTS.

Mrs. ALICE CONNOLLY, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I am the wife of Mr. Connolly, who just left the witness stand. I remember a Thursday evening, the 11th day of September. I visited the home of Mr. Vincent Quartararo on that day. My [387] husband was with me. Mr. Vincent Quartararo was there during the evening. We were there between seven thirty P. M. and eleven thirty or twelve.

TESTIMONY OF RICHARD ROBERTS, FOR DEFENDANTS.

RICHARD ROBERTS, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I am the proprietor of the Cliff House, in San Francisco. I remember Saturday, August 30, 1924, seeing Mr. Quartararo with his wife and others at the Cliff House. I believe that was the Kupfer's party, he was in that party. The date on this card is August 30. Also the name of Mr. Kupfer endorsed on the face of the card, and my head waiter's name. So that I am certain it was August 30. There was a family party there, there were the wives. I know Gus Bertrand—A. A. Bertrand. I am acquainted with the wife of Mr. Quartarao. She was present. I don't remembr exactly what time the party came there, but I should judge about between seven-thirty and eight o'clock. I don't remember how late in the evening they remained. I remember the 3d of September, 1924. There was a wedding party at the Cliff House that night. It was Mr. Bertrand's wedding party. The young lady who is now his wife was also there. There was the whole family there, and, of course, Vincent Quartararo and his wife. There were very many there, there were probably thirty or forty people in the party. I remember that A. Guppanelli was there. I remember Saturday evening, September 6, 1924, the Saturday after the

(Testimony of Richard Roberts.)

wedding. Vincent Quartararo and his wife were at the Cliff House that night. I sat with them for about an hour. I could not tell exactly what time that was, I should judge it was somewhere around nine to eleven o'clock, along in there. [388]

On cross-examination, the witness testified as follows:

I do not remember exactly seeing Mr. Quartararo there on other occasions; he was there quite often during that time, because I was arranging for that wedding party, it was during that period. The only evenings that I remember are those two that I testified to. I remember the party being there, I remember the occasion. I fix the date of the wedding because it was a unusually large party, and I can't forget it in a hurry. We naturally have a record of Mr. Kupfer's party on September 3d, and looking it up it is very easy to find the time, September 3d; and the next day I went to the State Fair, and I met Kupfer on the train. I looked up the date from our records and found that the records disclosed that Mr. Bertrand and party had been there at that particular time. There was a charge tag for that particular date; I never have looked for that, as a matter of fact, I might have it home and I might not, I don't know.

TESTIMONY OF ARTHUR MANGIN, FOR DEFENDANTS.

ARTHUR MANGIN, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I reside at 410 Shrader Street. I am club manager at the Elks. I remember doing something for Mr. Vincent Quartararo on Tuesday, September 2, 1924, I gave him my Orpheum seats. I gave him two seats. They are my own seats, I have had them for four or five years. I have the same seats every Tuesday night. This was Tuesday, September 2d. I did not go to the Orpheum that night. I think Mr. Quartararo bought the tickets for Mr. Bertrand. I asked him why he wanted the tickets, and he said he wanted to use them, he wanted to take Mr. Bertrand and his future wife to the Orpheum. [389]

TESTIMONY OF A. A. BERTRAND, FOR DEFENDANTS.

A. A. BERTRAND, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I reside at 2708 Fulton Street. I am acquainted with Vincent Quartararo. I remember going to the Orpheum on the 2d day of September, the night of Tuesday, the 2d day of September, 1924. I got the tickets to go there from Mr. Quartararo, through Mr. Mangin. I took Miss Trapani there that

(Testimony of A. A. Bertrand.)

night. On Wednesday, the 3d, I was at the Cliff House. We got out there about eight o'clock, or 8:30, along there somewhere. We left the party about half past ten. During all of the time I was there Mr. Vincent Quartararo was there. I left San Francisco that evening and returned on September 13th. I have two sons, Ray and Joe Bertrand, by a former marriage. During my absence they went to dinner every night at Vincent Quartararo's house, except on one occasion. On Saturday, September 13th, the day we arrived back in San Francisco on the steamer, we had supper that night at Mr. Quartararo's home. All of the family were there, on my side and his side. Vincent Quartararo was there. We ate dinner about 6:30 and we spent the evening there. I saw Vincent Quartararo on the following night, that is to say, on Sunday, September 14th, at his home. It was after dinner; I went there after my dinner. I should judge it was about eight o'clock. He remained there during that evening. He was arranging for his trip to Catalina. On the night of the 2d of September, which was Tuesday night, the night we went to the Orpheum, Mr. Vincent Quartararo and his wife were there, and I was there with my intended. [390]

TESTIMONY OF MRS. A. BERTRAND, FOR DEFENDANTS.

Mrs. A. BERTRAND, a witness called on behalf of defendants, being first duly sworn, testified as follows:

The COURT.—Mr. Coghlan, is her testimony to cover identically the same episode?

Mr. COGHLAN.—Yes, your Honor.

Mr. GILLIS.—I will stipulate that it will be the same as that of her husband.

The COURT.—I don't think you need cumulate evidence to that extent. It is stipulated that Mrs. Bertrand will testify the same as her husband, Gentlemen, and you may consider that she has so testified.

Mr. GILLIS.—That is what her testimony would be, Mr. Coghlan?

Mr. COGHLAN.—Yes, precisely the same.

TESTIMONY OF ANDREW F. BURKE, FOR DEFENDANTS.

ANDREW F. BURKE, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I am an attorney at law. I reside at 3020 Jackson Street, San Francisco. My law office is in the Hobart Building. I remember Tuesday, the 16th day of September, 1924. A party of approximately 250 left from San Francisco on the "Ruth Alexander" about midnight to attend the Cali-

(Testimony of Andrew F. Burke.)

fornia Elks State Association Convention at Catalina Island. I have a list of those that went. I was the chairman of the committee and the list that I have is the list made up by Mr. Lynch and myself prior to the sailing of the steamer, on which we listed the members, the stateroom assignments, and their bungalette assignments on the island. I find the name of Vincent Quartararo here. I know of my own knowledge that Vincent Quartararo [391] went on the 16th of September, on that Tuesday, with us on that outing. His wife was with him. Mr. and Mrs. Bertrand were also along. William Lynch was there. I don't remember Jesse Adams; there was a W. T. Adams. And Frank Crester, Mr. Adams, Mr. Crester, and Mr. Quartararo occupied the same stateroom going and returning. We left Catalina on Saturday afternoon and reached San Francisco on Monday morning, September 22, at eight o'clock. When we arrived here there was a parade. Some members joined in the parade, and others went directly home. I went directly home.

TESTIMONY OF THOMAS HARRIS, FOR DEFENDANTS.

THOMAS HARRIS, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

I reside at 169 Jordan Avenue, San Francisco. I am an electrical engineer. I am acquainted with Vincent Quartararo, a defendant in this case. I

(Testimony of Thomas Harris.)

saw him on Wednesday, September 3, 1924, at the Cliff House, at the wedding party.

The COURT.—I think we have had enough on that subject, Mr. Coghlan. There does not seem to be any doubt left that Mr. Quartararo was at that wedding.

Mr. GILLIS.—I will stipulate that he was there.

Mr. COGHLAN.—I think the chief witness for the Government, so far as this defendant is concerned, testified specifically about that date.

The COURT.—Well, that is a matter for the jury. At least, it is perfectly clear now that there was a wedding there, and that Mr. Quartararo was at the wedding.

Mr. COGHLAN.—And will the District Attorney also stipulate that Mr. A. Taffeneli, whom we have here to testify, was there also? [392]

Mr. GILLIS.—Yes.

WITNESS. — (Continuing.) Mr. Quartararo was there that night during the time that I was there. I arrived there about ten minutes to seven and left at about twelve o'clock.

Mr. COGHLAN.—And will that be stipulated to also, Mr. Gillis, as to Mr. Taffeneli? We can prove it by him.

Mr. GILLIS.—Yes.

TESTIMONY OF H. B. BRITTAN, FOR DEFENDANTS.

H. B. BRITTAN, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I live at 1106 Bush Street, San Francisco. I am with the Pacific Steamship Company, as assistant general passenger agent. I am acquainted with Vincent Quartararo, the defendant. I cannot say positively that I saw him on the night of Tuesday, September 16, 1924, but I did see him the next day, on board the "Ruth Alexander." We were taking a delegation from San Francisco to the Elks convention at Catalina. We left at midnight on the 16th. The boat was ready for the reception of passengers at nine o'clock on the night of the 16th. There was an incident that occurred the next day, on the 17th, that makes me absolutely positive of seeing Mr. Quartararo on that day.

TESTIMONY OF THOMAS F. DELURY, FOR DEFENDANTS.

THOMAS F. DELURY, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I live at 612 Page Street, San Francisco. I am district manager, Pacific Telephone & Telegraph Co. I am acquainted with Vincent Quartararo. I saw Vincent Quartararo on the "Ruth Alex-

(Testimony of Thomas F. Delury.)

ander" on the 16th day of September, 1924, as we left San Francisco. We left at about midnight. I saw him earlier in the [393] evening; we went aboard about nine o'clock and I saw him on board. I saw him on board the next day, the 17th. I saw him at Catalina on the 18th, 19th and 20th. I saw Mr. Quartararo on board the boat as we left for home on Saturday, September 20th.

TESTIMONY OF FRANK CRESTA, FOR DEFENDANTS.

FRANK CRESTA, a witness called on behalf of defendants, being first duly sworn, testified as follows:

The COURT.—Is this witness merely going to testify as to the Catalina trip?

Mr. COGHLAN.—Yes.

Mr. GILLIS.—I will stipulate as to that.

The COURT.—You have had plenty on that, Mr. Coghlan, I think.

Mr. GILLIS.—He left on the 16th and arrived back on the 22d.

Mr. COGHLAN.—There are many that will testify to that. Of course, these dates running from September 15 are of exceeding importance to me.

Mr. GILLIS.—I am willing to stipulate that he went down to Catalina.

The COURT.—The district attorney has stipulated that Mr. Quartararo went aboard that boat

Testimony of Miss M. Trapani.)

and went to Catalina and returned when this delegation returned.

Mr. GILLIS.—Yes.

Mr. COGHLAN.—That is all. [394]

TESTIMONY OF MISS M. TRAPANI, FOR DEFENDANTS.

Miss M. TRAPANI, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

I am a sister-in-law of Vincent Quartararo. I remember Monday, September 22d, 1924. That was the day Mr. Quartararo returned with his wife from Catalina. They came to my house for dinner. My mother prepared a dinner for a family reunion on the return from that trip to Catalina. The Bertrand family was there.

TESTIMONY OF FRANK SAMUELS, FOR DEFENDANTS.

FRANK SAMUELS, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I am in the real estate business. I live at 635 26th Avenue. I am acquainted with Vincent Quartararo, the defendant. I saw Mr. Quartararo on September 5 at the Elks Club. Also present at that time were Mr. George Marks, Mr. Ralph Sheehan, and Mr. John Connolly. I remember the 6th day of September, 1924. I saw Mr. Vincent Quartararo at the Cliff House that evening. He

(Testimony of Salvatore Quartararo.)

was there when I got there. I got there at about a quarter after nine.

TESTIMONY OF SALVATORE QUARTARARO, FOR DEFENDANTS.

SALVATORE QUARTARARO, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I live at 880 Delano Avenue, San Francisco. Vincent Quartararo, the defendant, is my son. I am in business with my son, in the oyster cocktail business. I am with my son at the Bohemian Cocktail Co., 445 Minna Street. The name of the business is the Bohemian Cocktail Supply Co. We just produce oyster cocktails there, syrups. We are going out of business now. The business has to do with oyster cocktails, [395] syrups; it has never had anything to do with any character of beverages. The business is now being liquidated, sold and liquidated. I was there in the month of September, 1924. I remember when my son went to Catalina. I was at the place of business and in charge of the Bohemian Cocktail & Supply Co. during that period of time between the 16th of September and inclusive of the 16th, to the 22d of September, and inclusive of that date. My son left me there. I did not see Marina Crivello at that place of business on the 16th of September, or the 17th, or the 18th, 19th, 20th, 21st, or 22d. At that time I did not know anybody who was called "C. H." The first time I heard

(Testimony of Salvatore Quartararo.)

the name Belanger was when I came up to court here on Monday. Then I recognized this Mr. Belanger, because Mr. Crivello pointed him out and Mr. Belanger stood up. That was the first time I have ever seen him.

Mr. COGHLAN.—Q. Then I will ask you the direct question, did you have a conversation with this man who stood up, Belanger, when he was present, and when Marina Crivello was present, at the office of the Bohemian Cocktail & Supply Co., or anywhere else, between the 16th and 22d of September, in which you said to Mr. Belanger, or "C. H.," or whatever you may call him, "This is the man my son telephoned to," or words to that effect, or "This is the man that my son wants you to meet"? A. No.

Q. Did you have any conversation with Crivello at all, or in his presence, during the time that your son was absent at Catalina Island? A. No.

Q. You did not see any man by the name of Belanger during that period of time, or "C. H.," the person who stood up in court here the other day and whom you recognized?

A. No, I never did.

WITNESS.—(Continuing.) I did not hear my son, on any day [396] in September, telephone to Marina Crivello. My son did not leave any message with me to deliver to a man named "C. H.," or Belanger, during the month of September, 1924, or at any other time. I have known Marina Crivello for some time. I was with the Market

(Testimony of Salvatore Quartararo.)

Commission for five years, and my duty was to go to the fish wharf every month (morning?) and find out the fish they got, and set the price, and all of those things, and so I saw this fellow quite a little time down there, this Crivello. My son was working on the Food Commission of the State of California, and at that time was working in conjunction with the Government during the war. He was working with the State. I last saw Marina Crivello about a month and a half ago, in the store of the Bohemian Cocktail & Supply Co., at 445 Minna Street. I saw him talking with my son, and they argued and argued, and I was in the back, and I didn't hear really what they said, but when they finished talking I seen Crivello go away kind of black in the face, kind of angry.

On cross-examination, the witness testified as follows:

My son owned the business entirely. I just worked for my son. There was an old man over there working with me. After my son came back from Catalina he worked in there sometimes, sometimes come in and sometimes go out, and sometimes come in again. He attended to the books, and sometimes he helped along, too, to put up these oyster cocktails. He would be there sometimes a couple of hours, a few hours, four hours, go out and come back; sometimes he stayed half a day there; that would be pretty near every day, sometimes in the morning, and sometimes in the afternoon. I never knew Mr. Belanger at all, had never

(Testimony of Salvatore Quartararo.)

seen or heard of him before, and had never seen anybody there in the store that looked like him. I know Crivello very well, and [397] I know that he was not at the store when my son was at Catalina; he just come once in a while, you know. I did not see Crivello at all in the month of September. Maybe I saw him over there in October. Well, I couldn't tell if it was October, November or December, I don't know; he just come in once in a while. I don't think I saw him more than once after September. He might have been there two or three times in 1924. I couldn't tell exactly, because you know I don't take much interest whether he comes or not. I always work in the bank. It is in the back part of the store we make the cocktails and the syrup. There is a little front office. There is a partition there, but there is a door between. When my son came there he kept the books in the front part. I did not see Marina Crivello in August of last year. When Marina Crivello came there about a month and a half ago it just happened that my son was there then. I suppose it was in the morning, I don't remember. I think it was in the morning, about between ten and eleven. We have not made oyster cocktails for some time; we discontinued the business. We were not doing any business then, a month and a half ago. When I am working in back, as soon as somebody comes in it is my duty to go out and see who it is, and so I saw this Crivello come in. I saw my son talking to him. I was in back at-

(Testimony of Salvatore Quartararo.)

tending to my business. I think he stayed ten or fifteen minutes, or something like that. He went out the front way, out the front door, that is the only way to go out. I was in the back part, but at the same time, you know, I was looking around to see what those people say and what they don't say. I saw this Crivello talking to my son. He got kind of angry. He wanted something, I don't know. He looked awful mad. While they were talking I was standing there between the door; there is a door between the partition, and I was [398] standing there until he went out. I didn't hear what the conversation was, not really what he say. I was there in that business in May and June of 1924. My son was attending to the liquidation of this business. I don't know if my son had some other business. For about three or four years he was head deputy with the State Fish Exchange. Prior to that he had a store, fish and poultry, at the Emporium.

Mr. GILLIS.—Q. In the summer of last year did your son own a truck?

Mr. COGHLAN.—That is not proper cross-examination.

The COURT.—Objection overruled.

Mr. COGHLAN.—Exception.

A. There was a truck there, and it is there yet. That is what they used to deliver the cocktails with when we made the cocktails.

WITNESS.—(Continuing.) It was a regular truck; I cannot describe what kind of a truck it

(Testimony of Salvatore Quartararo.)

was. I do not know the name of it; I do not know where he bought it. I don't remember when he bought it, but it was before we were in business there. I don't know how big it is, or how heavy a load you can put on it. Maybe it is two tons, or a ton and a half, I don't know. He did not own any other truck than that. I don't know whether he paid for that truck in full in May or June of last year.

TESTIMONY OF A. E. DRENDELL, FOR DEFENDANTS.

A. E. DRENDELL, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I live at 752 24th Avenue. I am in the electrical contracting business. I know Vincent Quartararo, a defendant in this case. On Tuesday, September 30, 1924, I was at the Wheeler Island Duck Club, of which I am secretary. There were present [399] the entire membership of the club, among them Mr. Bud Richmond, Mr. Simons, Dr. Veatch, Vincent Quartararo. We arrived there at approximately 5:30 in the afternoon. It takes about two and one-half hours to go up there. We returned to San Francisco at 8:30 o'clock in the morning on October 2d. The reason for our staying over after the first day of the duck season was that the "Countess," the launch which we hired from the Sacramento Short Line, failed to return for the second trip and pick up the balance of our mem-

(Testimony of A. E. Drendell.)

bership, some of them having left, and we had no means of getting away from that island except in an old tub, as we call it, that happened to be moored there, but which could not pull out until high tide, 4:30 the next morning, and so, to our inconvenience, we waited until 4:30 the next morning before we started over to Bay Point, and we landed in San Francisco at about 8:30 the next morning.

Mr. COGHLAN.—Will it be conceded that the same testimony would come from Bud Richmond, William Simons, and Dr. Veatch?

Mr. GILLIS.—Certainly.

Mr. COGHLAN.—And William Banta?

Mr. GILLIS.—Yes.

TESTIMONY OF MRS. J. S. BERTRAND, FOR DEFENDANTS.

MRS. J. S. BERTRAND, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I live at 23 White Street. My husband is J. S. Bertrand. He is connected with the Levy & Ventner Co. I remember Thursday, October 2d, because that was a birthday. I saw Vincent Quartararo on Thursday, October 2d, at my brother-in-law's home on Fulton Street. My brother-in-law is Mr. A. A. Bertrand. There was a dinner party there, and we were there from six [400] o'clock until about ten or ten thirty, it might have been later, I cannot remember exactly.

TESTIMONY OF ARTHUR MANGIN, FOR DEFENDANTS (RECALLED).

ARTHUR MANGIN, a witness recalled on behalf of defendants, testified as follows:

I remember Tuesday, September 9, 1924. I remember going to the Orpheum that night. I went with my wife. Vincent Quartararo and his wife were there at the Orpheum that night. I saw them there about 8:30; I left just before the show was over, I left just about at the last act, and they were still there.

TESTIMONY OF RAY BERTRAND, FOR DEFENDANTS.

RAY BERTRAND, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I live at 2708 Fulton Street. I am a son of Mr. A. A. Bertrand, who testified here. I am acquainted with Vincent Quartararo. I remember when my father left upon his honeymoon on September 3. From September 3 to and inclusive of the 13th of September, we had dinner at Mr. Quartararo's house. Mr. Quartararo has two children, about eight and ten years old, I think. On the evening of September 4 we all went to bed early, it was just the night after the wedding, and everybody was tired. Mr. Quartararo went to bed also, that is, as far as I know, he started to his room and intended to go to bed. On Sunday, September 7,

(Testimony of Ray Bertrand.)

1924, we all went to Portola Valley, that is, Mr. Quartararo and his family, Miss Trapani, myself, my brother and sister. We all came home together the same evening. [401]

TESTIMONY OF JOSEPH BERTRAND, FOR DEFENDANTS.

JOSEPH BERTRAND, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I am a brother of the last witness. I heard his testimony. My testimony would be substantially the same.

Mr. COGHLAN.—Is it conceded that he would testify the same, Mr. Gillis?

Mr. GILLIS.—Oh, yes, he would give the same testimony.

Mr. COGHLAN.—I think that is all I have to offer.

The COURT.—Have any other counsel any other witnesses?

Mr. GREEN.—No, your Honor.

The COURT.—Any rebuttal, Mr. Gillis?

Mr. RIORDAN.—At this time, if your Honor please, I would like to announce to the Court that we have come into possession of some three telegrams, between yesterday and to-day, that we think are material to our case, and I ask leave at this time to present that evidence. I had just become aware of that.

(Testimony of S. G. Kitchen.)

Mr. GREEN.—I don't know what the evidence is, but I object to the reopening of the Government's case in chief.

The COURT.—It is always permitted, Mr. Green. If there is anything new in the telegrams you will be given the opportunity to meet it.

Mr. COGHLAN.—May we have an opportunity to inspect the proffered evidence?

Mr. RIORDAN.—At the proper time you will have full opportunity.

Mr. COGHLAN.—We will have time to rebut it?

The COURT.—Absolutely. If the telegrams present any new matter, any defendant involved may have such time as is necessary to meet it. [402]

TESTIMONY OF S. G. KITCHEN, FOR THE UNITED STATES.

S. G. KITCHEN, a witness called on behalf of the United States, being first duly sworn, testified as follows:

I am manager of the Postal Telegraph Company in San Francisco. I identify the telegrams handed me as coming from our files. These are the original telegrams filed with us. They were presumably written by the sender, they were the telegrams filed with us.

TESTIMONY OF A. E. LITTLER, FOR THE UNITED STATES.

A. E. LITLER, a witness called on behalf of the United States, being first duly sworn, testified as follows:

I am city superintendent of the Western Union Telegraph Company. The telegram now shown me, dated May 27, 1924, was taken from our files. That is the original telegram brought in by the sender.

Mr. GREEN.—On behalf of the defendant Belanger, it will be stipulated that these telegrams are in his handwriting.

Mr. RIORDAN.—I offer them in evidence.

Mr. FAULKNER.—Our only objection to the telegrams—we are not making any technical objection—is that they are immaterial and irrelevant and incompetent, there is no transaction that they relate to shown.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

Mr. RIORDAN.—These telegrams read as follows:

On the blank of the Postal Telegraph Cable Co.:

"May 28, 1924.

"To Mrs. C. H. Belanger,
1108 N. Heliotrope Drive,
Los Angeles, Cal.

"Norgan wired money was wired First National

(Testimony of A. E. Littler.)

Bank L. A. Twenty-third. [403] Investigate at Bank. Francis leaving on Lark to-night. Love.

C. H."

A telegram to the same party, Western Union Telegram, dated May 27, 1924:

"To Mrs. C. H. Belanger,

1108 N. Heliotrope Drive,

Los Angeles, Cal.

"Have wired Vancouver regarding Williams money. Should hear in the morning. Passed couple hour with Berry to-night. Condition poor and quite here. Writing tonight. Hope you are well & happy. Love & regards to Teviotdale.

C. H."

And the last a Postal Telegraph telegram, dated May 28, 1924:

"Mr. George Norgan,

1050 Hamilton St.,

Vancouver, B. C., Canada.

"Just had telephone from Los Angeles saying that First National Bank has not yet received the money. Kindly investigate from your end. Wire me early because Williams is waiting.

"C. H. BELANGER."

TESTIMONY OF W. S. MORSE, FOR THE UNITED STATES (RECALLED IN REBUTTAL).

W. S. MORSE, a witness recalled on behalf of the United States in rebuttal, testified as follows:

On October 12, 1924, from the time the tow of the

(Testimony of W. S. Morse.)

"Quadra" started until four o'clock I was on the bridge on the "Shawnee." There was no sounding taken from the "Shawnee" between the time the tow started and four o'clock.

Mr. GREEN.—Just a moment. That is objected to, if the Court please, on the ground that it is not rebuttal. There has been an issue made on the question of this sounding, and this witness has already testified to what he did in connection with the sounding, and that has been denied by a witness [404] for the defense.

The COURT.—There was a witness here, Mr. Green, who testified that a sounding was taken while the ship was under way. Was that at two o'clock.

Mr. GILLIS.—Yes, your Honor, at two o'clock. That is the evidence.

The COURT.—I will overrule the objection.

Mr. GREEN.—Exception.

TESTIMONY OF R. N. WILLIAMS, FOR THE UNITED STATES (IN REBUTTAL).

R. N. WILLIAMS, a witness called on behalf of the United States in rebuttal, being first duly sworn, testified as follows:

I have the rank of ward machinist, coast guard service. Between four o'clock and eight o'clock in the morning on October 12, 1924, I was in the engine-room of the "Shawnee." I was standing by the throttle. I was engineer in charge. I iden-

(Testimony of R. N. Williams.)

tify this book shown me as the machinery log, U. S. Coast Cutter "Shawnee," for October 12, 1924.

Mr. GILLIS.—I ask that that part of the machinery log of the "Shawnee" for October 12, headed, "Midnight to 8 A. M.," signed by R. N. Williams, Machinist, be introduced in evidence; I ask to read it into evidence, in order that the record may not be encumbered with the whole book.

Mr. FAULKNER.—We object to that as immaterial, irrelevant and incompetent, and an effort on the part of the prosecution to impeach the testimony of a witness on a matter collateral to the issue concerning which he was cross-examined. Your Honor will have in mind that the sailor from the "Shawnee" testified to the taking of a sounding in the afternoon. Matters developed on cross-examination concerning from midnight of the [405] preceding day to 8 A. M. are collateral matters, and the impeachment of that witness concerning them would be immaterial, irrelevant and incompetent, not proper impeachment, and an effort to impeach a man on a collateral matter.

Mr. GILLIS.—The movements of the "Shawnee" from the moment she left Drake's Bay until the "Quadra" was seized is all part of the case.

Mr. FAULKNER.—That was not a part of the evidence of the man you are attempting to impeach.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

Mr. GILLIS.—From the machinery log of the

(Testimony of R. N. Williams.)

U. S. Coast Guard Cutter "Shawnee," October 12, 1924:

"Midnight to 8 A. M. at anchor. Lighted fires in No. 2 boiler at 4:30.

"5. Cut in No. 2 boiler. Warming main engine.

"5:30 Turned main engine by steam.

"5:55 Reported ready.

"6:00 Working two bells getting under way.

"6:05 Standard speed at 70 R. P. M. ordered. Two boilers steaming forced draft. 52–20 burner tips in use.

"6:45 Cut out No. 2 boiler. Reciprocating dynamo in use for lights and refrigeration. All machinery working well.

"7:35 Stop.

"7:53. Standard speed, calm and smooth. R. N. Williams, Mach."

WITNESS.—(Continuing.) I know Mr. Schybinger. He was a member of the crew of the "Shawnee" on October 12. He was not on the watch from four to eight as a water-tender. I remember that Mr. Dobson was. He is not in the service now.

On cross-examination, the witness testified as follows: [406]

I do not know for sure what watch Schybinger was on. He was not on my watch. I went on watch again at four o'clock in the afternoon. Dobson was with me; he went on duty at four o'clock in the afternoon. He was on from four to eight with me. Schybinger was on the twelve to four

(Testimony of R. N. Williams.)

watch, as far as I know. I have no record of that in the log, as to who was on watch. This is the original log. Schybinger was a first-class water-tender, and that gave him charge of the fireroom. The water-tender, when we are under way, has charge of the fireroom. There was no rough log kept by Schybinger in his own handwriting. I went on watch at five o'clock that morning to warm the main engine. I had nothing to do with the lighting fires in No. 2 boiler at 4:30 A. M. The water-tender always lights up. All this information in this log is reported to me during my watch. The water-tenders keep a fireroom log when we are in port. While we are at sea no rough log is kept by the water-tender in the fireroom. There is no such thing as a fireroom log while we are at sea. I have no record at all as to what men were on watch on this day. I am just relying upon my memory that Schybinger was not on my watch. Schybinger was on the boat at that time. I saw him on deck in the morning. He was on the ship the whole trip. I saw him on deck after eight o'clock, after we had breakfast. I saw him between 8 and 12 that morning walking around the deck. I did not see him in the afternoon. I saw Dobson at four o'clock, when we went on watch. I did not see him before that. Between twelve and four in the afternoon I was in my quarters. I was sleeping part of the afternoon because I had to get up early in the morning, four o'clock. I had to go on watch at four o'clock that afternoon, too. All of this time that I was sleeping, the "Quadra" was under

(Testimony of R. N. Williams.)

seizure by the "Shawnee." [407] I never saw another so-called rum runner seized by the "Shawnee." I have been on the "Shawnee" two and one-half years. I saw the seizure of the "Quadra" made. I was on the bridge at the time. I went to sleep about half-past two. I did not see Schybinger on deck at two o'clock. Part of the time I was out at the stern of the boat. I had my lunch at twelve o'clock and between 12 and 2 I went aft and walked around and then went down and went to sleep. I went to sleep at about a quarter to two.

TESTIMONY OF E. T. PETERSON, FOR THE UNITED STATES (IN REBUTTAL).

E. T. PETERSON, a witness called on behalf of the United States in rebuttal, being first duly sworn, testified as follows:

I am with the coast guard as engineer officer. On October 12, 1924, from the time the tow of the "Quadra" started until four o'clock I was on the bridge of the "Shawnee," and during that time I was watching particularly the tow-line, and to see that the engines were run at proper speed so that the tow would not part. My duty called for the regulation of the speed of the engines and the working of the engines, and the signals to the engine-room. I did not see any sounding taken from the "Shawnee" from the time the tow started until we got into San Francisco. I was in a position where I could have seen it if a sounding had been taken. It would not have been possible for

(Testimony of E. T. Peterson.)

any sounding to have been taken on that trip without my seeing it.

On cross-examination, the witness testified as follows:

I am still in the coast guard service, attached to the "Shawnee." I was on the port wing of the bridge. I was watching the tow-line, and the sounding-machine is in line with the tow-line. The sounding-machine is on the port side of the [408] "Shawnee." The tow-line was on the starboard side. You could not see the bight where the line was attached, but you could see over the stern and see the tow-line. I could see over the sounding-machine, and being on the port side, and not in line, you could see the starboard side, you cross the amidship line by looking aft from the port wing of the bridge. If the sounding-line went over the stern while another boat was in tow, the tow-line would be very apt to interfere with it, it would be very apt to trail aft. The tow-line is running over the stern free so that it can swing around. The bight is in the amidship line. It always is. There is a chock through which the rope goes. That is not in the center of the boat, it is about five feet on the starboard side. There is nothing interfering with the view at that height between the bridge and the sounding-machine, you can see over them. A sounding could not have been made and I not notice it. It is in my direct range of vision. I was keeping the hawser at all times in the water, one section of the hawser in the water. There was

(Testimony of E. T. Peterson.)

no time that it was out of the water; there was that one section in the water all the time. That is proper stowage.

TESTIMONY OF T. J. MORRIS, FOR THE UNITED STATES (IN REBUTTAL).

T. J. MORRIS, a witness called on behalf of the United States in rebuttal, being first duly sworn, testified as follows:

I am chief machinist's mate. I was on the "Shawnee" on October 12, 1924. I had the 12 to 4 watch and was on the 12 to 4 watch in the afternoon of October 12, 1924. I was engineer, in charge of the engine-room between 12 and 4 that afternoon.

Mr. GILLIS.—Q. Do you know who your watertender was? [409]

Mr. GREEN.—That is objected to on the ground that it is not proper rebuttal.

The COURT.—Objection overruled.

Mr. GREEN.—Exception.

A. I do; it was Schybinger.

Q. And he was there the whole watch, was he?

A. Yes, sir.

On cross-examination the witness testified as follows:

There were on that watch with me one oiler and one fireman. The name of the oiler was I. Hansen; the name of the fireman was A. D. Llewellyn. I am sure that Schybinger was in the engine-room at all times from 12 to 4 o'clock on that day. He was not in the engine-room at all, he was in the fire-

(Testimony of T. J. Morris.)

room. The fireroom and the engine-room are separate rooms, with a bulkhead between, and with a water-tight door between. The door was open for air. Occasionally I was in the fireroom; I can look in there from the engine-room. I was not looking in there at all times. I was not looking at Schybinger all the time I was on watch. I didn't have my eye on him all the time. It is my duty to know whether he leaves the fireroom. It is customary for men on watch in the fireroom to go up for air, but they have to leave notification when they go. The water-tender is not the one who keeps the steam up. The fireman is under him. It would be perfectly proper for the water-tender, who is in charge, to step up on deck for air, but he would have to notify someone before he leaves. He has to notify me. To my knowledge, I had no notification at all from the fireroom that day that anyone wanted to go on deck. I am positive of that. I am positive that Schybinger was not on deck at all times from 12 o'clock until 4 o'clock that afternoon. I am still attached to the "Shawnee." I have about two months more to serve. Captain Howell is my commanding officer. [410]

TESTIMONY OF A. D. LLEWELLYN, FOR THE UNITED STATES (IN REBUTTAL).

A. D. LLEWELLYN, a witness called on behalf of the United States in rebuttal, being first duly sworn, testified as follows:

On October 12, 1924, I was on the "Shawnee"

(Testimony of A. D. Llewellyn.)

as a fireman. My watch was 12 to 4 in the afternoon. I was on watch that day from 12 noon until 4 o'clock in the afternoon, as a fireman, down in the fireroom. Schybinger was the water-tender on that watch. He was there on duty during those hours on that day.

On cross-examination, the witness testified as follows:

I am still in the coast guard service, and still attached to the "Shawnee." My commanding officer is still Captain Howell. I have three months to serve.

TESTIMONY OF I. HANSEN, FOR THE UNITED STATES (IN REBUTTAL).

I. HANSEN, a witness called on behalf of the United States in rebuttal, being first duly sworn, testified as follows:

I am in the coast guard service, as engine man, second class. Between the hours of 12 noon and 4 o'clock in the afternoon of October 12, 1924, I was on duty, while the "Quadra" was in tow. My duty was in the engine-room. I was oiling. Schybinger was the water-tender between 12 o'clock noon and 4 o'clock in the afternoon on that day. I am absolutely sure of that.

On cross-examination the witness testified as follows:

I am still in the coast guard service. I have ten

(Testimony of I. Hansen.)

months to serve. I am still attached to the "Shawnee"; Captain Howell is my commanding officer. [411]

TESTIMONY OF G. STAHL, FOR THE UNITED STATES (IN REBUTTAL).

G. STAHL, a witness called on behalf of the United States in rebuttal, being first duly sworn, testified as follows:

My position with the coast guard is chief boatswain's mate. I was on duty on the "Shawnee" between 12 o'clock noon and 4 o'clock in the afternoon of October 12, 1924, when the "Quadra" was in tow. I was stationed on the quarter-deck, right aft on the quarter-deck; all the quarter-deck was mine, in my charge. My duty was to look out for the tow-rope, to see there was no man coming aft on top of the tow-line. That was in case the line slipped, so nobody would get tangled up in it. It is a dangerous place. I had an axe with me, so that in case of a collision, or somebody should run over the tow-line, I was to cut it. If anybody came there from our boat I would have chased them away. The reason that I would do that would be so that they would not get tangled up into the tow-line. I did not see Mr. Schybinger there that afternoon between those hours. There was no sounding taken off the "Shawnee" between those hours. In the middle of the watch that afternoon there was a new parcel, a chafing gear put in the tow-line.

(Testimony of G. Stahl.)

On cross-examination, the witness testified as follows:

It took three of us to put in that chafing gear, myself and two others. One was Stokes—he was chief boatswain's mate at that time, and the other was Pavis. I am still attached to the "Shawnee." I have a month and a half to serve. Captain Howell is still the commanding officer. The bitts where the rope was attached are approximately 15 feet back from the stern. That takes up all the quarter-deck. The quarter-deck is more than 15 feet long, the rest of the line was coiled up. The coil was a fore-and-aft coil. There were sailors that came around there that afternoon, but I chased away whoever came there. It [412] would be possible for anybody to walk there, but you would get tangled up in the line. It is considered a dangerous thing to do, to walk around the quarter-deck when you have a tow. It is possible for a person to leave the port side forward and walk back and around the deck-house on the other side as far as the skylight, but no further aft, without being in danger at all; people could congregate there without any danger, but I chased them away just the same. I chased away quite a bunch. I chased them on the sides. I kept the crew on the sides while that tow was going on. I was alone on the quarter-deck.

TESTIMONY OF H. ROTHE, FOR THE UNITED STATES (RECALLED IN REBUTTAL).

H. ROTHE, a witness recalled on behalf of the United States in rebuttal, testified as follows:

I was on the "Shawnee" between 12 and 4 o'clock in the afternoon of October 12th while the "Quadra" was in tow; I was on the bridge at different times; I was aft twice; I was all about the ship. During those hours I did not take or help to take any sounding from the "Shawnee."

On cross-examination, the witness testified as follows:

I never helped to take any, none at all. During any hours I didn't take any that day.

On redirect examination, the witness testified as follows:

I didn't take a sounding when the "Shawnee" was astern of the "Quadra."

TESTIMONY OF M. J. STOKES, FOR THE UNITED STATES (IN REBUTTAL).

M. J. STOKES, a witness called on behalf of the United States, in rebuttal, being first duly sworn, testified as follows:

My position with the coast guard is chief boatswain's mate. [413] I was on duty on October 12, 1924, when the "Quadra" was in tow, between the hours of 12 and 4. My duty called me anywhere

(Testimony of M. J. Stokes.)

on the boat that was necessary. I have charge of all the deck space, the boat, the tow-lines, and seeing that everything is secure. I do not remember that I saw Schybinger on deck at all between those hours. I assisted in putting a chafing gear on the tow-line at about the middle of that watch 12 to 4.

On cross-examination, the witness testified as follows:

I suppose the whole crew was up on deck at different times that afternoon. I did not notice any men from the engine-room or from the fireroom who were on duty come up on deck. I don't remember everyone who was on deck that afternoon. I don't know whether it is customary for men in the fireroom to step up on deck, I have nothing to do with the engine-room. I don't remember seeing Schybinger on deck that afternoon. If he had been there I might have seen him, but not that I know of. He probably could have been on deck without my seeing him. I am in charge of the deck 24 hours a day; I am in charge of the deck all the time. I could not say that I saw Dobson on deck after four o'clock. I could not be sure that I saw Hansen on deck that afternoon, I believe I was talking to Llewellyn on the port side in the evening, but not in the afternoon. I know I was talking to him after supper that night, I was talking with him on deck. I could not say that I saw Williams on deck that afternoon. I do not know that I saw Healy on deck that afternoon, I cannot remember.

(Testimony of M. J. Stokes.)

I probably saw Dolan on deck that afternoon, he is all around the ship. I may have seen him on deck that afternoon, but I don't remember. I don't remember seeing Rothe on deck that afternoon.

Mr. GILLIS.—That is all, your Honor. [414]

Mr. GREEN.—Is the Government resting now?

The COURT.—Yes. You may call your witnesses now.

TESTIMONY OF C. S. TOLLEY, FOR DEFENDANTS.

C. S. TOLLEY, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I am a banker. I am connected with the First National Bank of Los Angeles as one of the assistant cashiers. I have been connected with that bank about 24 years. My particular duties in connection with my position concern telegraphing payments and O. K.-ing checks. I know Mr. C. H. Belanger, one of the defendants in this case. He is a customer at our bank. I have known him from the month of February, 1924, and subsequent thereto. I recognize this instrument shown me as being a receipt from Mr. Belanger dated February, 1924; it is an official receipt given in the regular course of business in the First National Bank. Referring to this receipt, I had occasion to discuss with Mr. Belanger a transfer of the money represented by that receipt. He came to me not knowing how to transfer money, and he desired to send this money

(Testimony of C. S. Tolley.)

to Farmington, New Mexico. The money was sent to the First National Bank of Farmington, New Mexico. I understood that Mr. Belanger and Mr. Williams were in oil operations in Farmington, New Mexico. He asked my advice concerning the transferring of money in connection with that proposition. That was the execution of the advice that I gave him in February. These six receipts which I am now shown I recognize as official receipts of our bank and I recognize the signatures to all of them. I cannot positively identify the dates of all of them, but I know that subsequent to February Mr. Belanger did come in and see me, and I advised him concerning the transfer of money from Los Angeles to H. L. Williams, at Farmington, New Mexico. [415]

Mr. FAULKNER.—I will offer these documents in evidence.

(The papers were here marked Defendants' Exhibit "K.")

WITNESS.—(Continuing.) Subsequent to February, 1924, I had occasion to meet Mr. H. L. Williams. He was a depositor in our bank. I met Mr. Williams I think previously to the time that he opened his account. It was sometime in March that he opened an account and established banking relations with us. He was introduced by Mr. Belanger. Mr. Belanger was his reference to the bank. Mr. Williams was introduced to us as an oil operator in connection with Mr. Belanger. In the month of May, 1924, and particularly around

(Testimony of C. S. Tolley.)

the 24th of May, we had occasion to advise Mr. Williams and Mr. Belanger concerning the transfer of some moneys coming from Canada. I recognize this check which is shown me, dated May 24. I recall in connection with the issuance of that check a conversation with Mr. Williams and Mr. Belanger concerning a sum of approximately $12,000. Mr. Belanger came to the bank and stated that there was some money coming to him, and informed me that there would be $12,000. He made out a check, as we have it here—a check that I made out and Mr. Belanger signed, on May 24, for the purpose of establishing an account for Mr. Williams, that is, depositing it to his credit. The account had been opened before. The sum of $11,769, some amount like that, came, and for that reason we destroyed this check, that is, Mr. Belanger destroyed it; in other words, the check was returned to Mr. Belanger. We received a draft in the sum of $11,793.60; the difference is represented by the cost of the exchange. I remember that there was a delay of about four or five days in the receipt of that check. There were inquiries made of me concerning this delay by Mrs. Belanger. When she was inquiring of me concerning the failure of the money to arrive on time, she showed me a [416] telegram. I recognize Government's Exhibit 59 as a telegram similar in form to the one Mrs. Belanger showed me. In the discussion on May 24th the name of the man from whom the money was coming was mentioned; it was Morgan, or

(Testimony of C. S. Tolley.)

Norgan, some name like that. That is my recollection. The money came to us in the form of a check or credit from the First National Bank of Hollywood, affiliated with the First National Bank of Los Angeles; it was received from the Bank of Italy of Los Angeles; my recollection is that they had received it from the San Francisco main office, but I don't know just what bank sent it to them. The account of Mr. H. L. Williams was credited with that sum.

Mr. FAULKNER.—I offer the torn check, which is in an envelope, in evidence; I also offer the draft in evidence, and ask that they be marked our exhibits, respectively, next in order.

(The documents were here marked, respectively, Defendants' Exhibits "L" and "M.")

WITNESS.—(Continuing.) I recognize this as a photostat copy of the deposit of that particular fund to Mr. Belanger's account and Mr. Williams' account; it first came to Mr. Belanger and then we had instructions to credit it to Mr. Williams' account.

Mr. FAULKNER.—I offer this in evidence.

(The document was here marked Defendants' Exhibit "N.")

WITNESS.—(Continuing.) I have had occasion to advise Mr. Belanger concerning financial matters during quite a period of time that he was a patron of our bank. From time to time we would speak of his oil operations in Farmington. Several letters of introduction were given to him by the

(Testimony of C. S. Tolley.)

bank; one was given him to a man by the name of Brown, vice-president of the [417] Union Oil Company. That letter was given him by one of our vice-presidents, an assistant cashier. It was a business letter. I know Mr. G. S. Green. He is also an assistant cashier in our bank. His desk is adjoining mine. I recognize this as a photostatic copy of an original letter which was given to Mr. Belanger, or on Mr. Belanger's behalf, in relation to an oil proposition.

Mr. FAULKNER.—I offer this letter in evidence.

(The letter was here marked Defendants' Exhibit "O.")

"August 21, 1924.

"Mr. Chester W. Brown,

"Vice-President Union Oil Company.

"Los Angeles.

"My dear Mr. Brown:

"This letter will introduce to you our good friend, Mr. C. H. Belanger, who is a responsible man, and in whose statements you may rely upon. He being an old depositor of this Bank, we have taken the liberty of referring him to you, thinking that Mr. Belanger and the Union Oil Company might both profit thereby.

"Hoping for the above mutual advantage, I beg to remain

"Yours very truly,

"(W. H.)

"G. S. GREEN,

"Assistant Cashier."

(Testimony of C. S. Tolley.)

WITNESS.—(Continuing.) At the time of this $12,000 transaction, I think the money was coming from Edmo n, or one of those places; I am not sure.

On cross-examination, the witness testified as follows:

I have known Mr. Belanger quite a few years. I first got acquainted with him in the First National Bank of Los Angeles. I first met Mrs. Belanger there. That was probably two or three years ago, I presume. I think I met Mr. Belanger six months to a [418] year later. He opened a bank account. From time to time deposits have come in to his account. I could not say positively that they were made with any degree of regularity; probably once or twice a month, or probably oftener than that. They were different amounts. This $11,000 was about the largest amount. It varied from that on down. I met Williams through Belanger; I didn't know him before. I didn't know whether he was an oil operator only through what Mr. Belanger told me; when an account is opened we ask their business, and later we receive the information from the bank reference that is given to us by the depositor. I did not personally check this reference, but the bank did. Someone is in charge of that. Our information card or reference card indicated that he was from Edmonton, Canada, and that he was [419] an oil operator. I did not open C. H. Belanger's account, so I am not sure what was given in the

(Testimony of C. S. Tolley.)

way of reference at that time; I did not open it personally, but I was introduced to him and possibly O.K'd his check. I presume the bank had a report regarding him. I have not looked it up. When this $11,000 transaction came up I did not look up Mr. Belanger's reference card, for the reason that Mr. Way, our former vice-president, a retired vice-president, and Mr. Green spoke very highly of him, and they had the early transaction with him before I did, and for that reason when Mr. Green and Mr. Way would be out I would wait on Mr. Belanger. I did not know what Mr. Belanger's holdings were principally in business concerns. I know nothing whatever about oils, so I would not advise him about oils. It was about the transfer of this money. We had no social acquaintance, nothing but business. If Mr. Belanger took occasion to tell me that he had large holdings in the Consolidated Exporters Co. of Canada I do not recall it. He did not tell me that this sum of $11,000 odd was coming from the Consolidated Exporters Co. of Vancouver, B. C.

TESTIMONY OF H. S. MACKAY, Jr., FOR DEFENDANTS.

H. S. MACKAY, Jr., a witness called on behalf of the defendants, being first duly sworn, testified as follows:

I am an attorney at law, practicing in Los Angeles. I am a member of the firm of Flint & Mackay. The members of that firm are Frank P.

(Testimony of H. S. Mackay, Jr.)

Flint, William R. Flint, William A. Bowen, Robert B. Jackson, Arthur R. Smiley, J. H. Shank, W. L. Nutten, Jr., Franklin W. Peck, and myself. We are the attorneys for the First National Bank of Los Angeles. In the month of May, 1924, Mr. Teviotdale was recommended to our firm by Mr. [420] Martin, the vice-president of the First National Bank, presenting a card of introduction addressed to Mr. Bowen, of our firm, which card I have here, and which is a part of our office records. Our office records show that Mr. Teviotdale called on the date that this card bears. Mr. Bowen's room adjoins my private office.

Mr. FAULKNER.—I offer the card in evidence and ask that it be marked Defendants' Exhibit "P."

(The card was here marked Defendants' Exhibit "P.")

WITNESS.—(Continuing.) Subsequent to May 28, 1924, our firm had occasion to advise certain people in connection with an oil proposition in what is known as the San Juan Basin. Mr. Teviotdale called at the office first and explained that a Mr. Williams, Mr. Belanger, Mr. Norgan, and Mr. Nard were becoming or had become interested in the acquisition of some oil holdings in the San Juan Basin, and they were seeking our advice as to the best method of handling the situation from a corporate standpoint. He also stated that Mr. Williams was interested with some people in Baltimore in connection with adjoining oil properties.

(Testimony of H. S. Mackay, Jr.)

Mr. Teviotdale came in first alone. Our office records show that he called several times, later with Mr. Williams, and then later—some time, as I recall it, during the month of June, Mr. Belanger came in. The matter was somewhat novel and as the amount of acreage they were attempting to obtain was so enormously large, we had to see on what basis it would be possible for them to handle it, and so Mr. Bowen and I discussed the matter. It was something in the neighborhood of between 150,000 and 200,000 acres of oil properties in New Mexico. A corporation was formed. Mr. Belanger, Mr. Teviotdale and Mr. Williams were interested. The purpose of that corporation was to acquire such of the [421] oil lands as they could. Our notes show that Norgan et al. were to put up $20,000 for Well No. 7, for a 50 per cent interest. Then it says in parenthesis, "Has already put up $12,000." I am reading these notes from our files. This note I cannot tell you exactly when it was made, but I know that it was in our file before September 1, 1924, because at that time Mr. Bowen went East for a month and he left the matter in my care and these papers were in the file at that time. I had occasion to see Mr. Belanger in our offices in the month of September, 1924. He came into the office on September 15. About a week after that Mr. Belanger came to see me just as I was leaving to go to attend an important conference I had at the bank. He told me that he was going away and would like very much to see me

(Testimony of H. S. Mackay, Jr.)

that day. I told him it would be impossible, because I was going to be engaged all the rest of the day, and that Mr. Bowen would soon return from Baltimore, and that I wished he would wait until Mr. Bowen came back, and so he said he would wait until after his return. He said he was going north.

Mr. FAULKNER.—Q. In the month of September did you receive from Mr. Belanger a summons and complaint in an action which you defended, and which was pending in the District Court of the State of New Mexico, in and for the county of San Juan?

Mr. RIORDAN.—Is this for the purpose of establishing this oil corporation?

Mr. FAULKNER.—The complaint shows that during the month of May, 1924, H. L. Williams and Belanger entered into an oral agreement concerning an oil proposition in San Juan.

Mr. RIORDAN.—I am willing to stipulate, if your Honor please, that these particular parties named here went into this law [422] office and there made arrangements and went through all the legal procedure about an oil corporation as testified to here.

On cross-examination, the witness testified as follows:

The first time I became acquainted with Mr. Belanger was in this oil incorporation matter. I never met Mr. Belanger before. I only met him in a business way during that time. I should say

(Testimony of H. S. Mackay, Jr.)

that I met him personally and had conversation with him from four to six times. He never discussed with me his interests in Canada. I understood—he didn't tell me—that he was a Canadian. I only saw Miller once. I do not know if he is the same Jack Miller who was convicted down there for a liquor conspiracy. I know there was a Miller down there who was convicted. This Miller's name was J. Miller. I prepared a document for them that day and I know that his name is J. Miller. I never saw Mr. Nard except that once. He was there at that same time. I don't know whether he has any business in Canada or in Scotland.

On redirect examination, the witness testified as follows:

My associate, Mr. Bowen, handled most of these transactions. He is in San Diego to-day on some litigation, settling a lawsuit. In this matter I think there was another suit brought by some assignees of some creditors of these oil operations in New Mexico against Mr. Belanger and others. We are also representing him in a condemnation suit, for the condemnation of alley adjoining a piece of property he owns in Los Angeles. I saw Mr. Belanger frequently when he was consulting with Mr. Bowen. [423]

TESTIMONY OF D. J. TEVIOTDALE, FOR THE DEFENDANTS.

D. J. TEVIOTDALE, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I reside in Pasadena. I have lived there 18 months. Prior to that my residence was in Edmonton, Canada. I know C. H. Belanger. I knew him since I was a boy, a young boy. Since I have resided in Pasadena I have seen Mr. Belanger there frequently. I saw him on several days in the month of September. I saw him on the 21st of September. That was a Sunday. I saw him that day at my father's residence in Pasadena. I am a teacher in Pasadena. I have been a teacher for a matter of a few months there. Prior to that I was a teacher in Canada. Prior to that I was a soldier. I am absolutely definite in my statement that I saw Mr. Belanger on Sunday, the 21st of September. I fix that because it was the day following the return of my mother and father from Europe. They returned on Saturday, the 20th; that was the second Saturday after my younger brother left for school in Canada, and I know that he left about the 4th or 5th of September. I know that he left in the first week of September, because that was a few days after Labor Day, and on that occasion we were on a holiday together. My brother had reached Toronto and had been in Toronto a day or two when my father and mother arrived in Toronto on their way home. It takes

(Testimony of D. J. Teriotdale.)

about five days to go from Pasadena to Toronto—something less than a week. My brother arrived there the 10th or 11th of September and my father arrived there the following Sunday. He was in Toronto the following Sunday morning. Another fact which enables me to fix the date of their return is that before my father had been in Pasadena a week he returned to Canada. I saw Mr. Belanger at my father's house in Pasadena on Sunday, September 21. There [424] were present Mrs. Belanger and Mr. Belanger, Mr. and Mrs. Gilbert Wood, and my own immediate family, father, mother, and sister. My father brought a certain rather unique present to Mr. Belanger, which consisted of a Scotch hat and a pair of bagpipes. We had Mr. Belanger dressed up in those, sitting on the veranda, endeavoring to play the pipes. Mr. and Mrs. Belanger left our house that day to go over to the residence of Mr. and Mrs. Wood, to have dinner.

On cross-examination, the witness testified as follows:

I have known Mr. Belanger fifteen or sixteen years. It is an old family acquaintance. Mr. Belanger was a hotel proprietor in Canada. I don't know anything about his holdings in the Consolidated Exporters, Ltd. I am not related in any way to Mr. Belanger. I am relying on my own memory when I give the date as September 21. It is vividly impressed on my mind in this particular case.

TESTIMONY OF G. A. WOOD, FOR DEFENDANTS.

G. A. WOOD, a witness called on behalf of defendants, being first duly sworn, testified as follows:

My name is Gilbert A. Wood. I am associated with the H. A. Schiffmann Co., manufacturers of proprietary medicines, 1734 North Main Street, Los Angeles. I reside in Pasadena. I have lived there three years next October. I know Mr. C. H. Belanger. I have known him seven or eight years. I saw Mr. Belanger in Pasadena in the month of September. I saw him in Mr. Teviotdale's house and also in my own. I also saw him at our factory on the following day. I saw him in Mr. Teviotdale's house on the 21st of September. I have known Mr. Teviotdale about eighteen months. We visit back and forwards. I was over at Mr. Teviotdale's house one or two days before Mr. Teviotdale [425] arrived from Europe, and they told me that he was going to arrive on the 20th. On the following day my wife and myself went over to welcome him back from abroad, which was a Sunday. I recall the incident of the present to Mr. Belanger. I also received a present, a very nice cane. That same day Mr. and Mrs. Belanger came over to our house to dinner. There were present Mr. and Mrs. Belanger, my wife, my son, and myself. They remained until probably ten o'clock that evening. I saw Mr. Belanger the next day at our factory. Mr. F. C. Schiffmann was there, and the entire office

(Testimony of G. A. Wood.)

force of that business. That is quite an establishment. I know that Mr. Schiffmann was there, because Mr. and Mrs. Schiffman should have been at our house on Sunday for dinner, and we were talking about the reason why he could not be there, and also, I had the misfortune of twisting my ankle in the afternoon. I am absolutely positive that I saw Mr. Belanger on both those days.

On cross-examination the witness testified as follows:

Before residing in Pasadena I lived in St. Paul, Minnesota, and before that in Chicago. I have never resided out of the United States. I am recalling the 21st of September, because young Teviotdale said his father was expected on the 20th. There are certain circumstances that would make me recall it. I have not any memorandum to go on. I have talked about this matter with Mr. Belanger during the last couple of days. He came down South. It was Mr. Teviotdale that refreshed my memory. That is how I fix this matter principally, by that refreshment.

TESTIMONY OF R. V. WOOD, FOR DEFENDANTS.

R. V. WOOD, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I am the son of Mr. Gilbert Wood, who has just left the [426] witness-stand. My business is surveying. I reside in Pasadena. I remember see-

(Testimony of R. V. Wood.)

ing Mr. Belanger at our house on Sunday the 21st of September. I fix the date from the fact that my folks asked them over to dinner that evening. My folks asked Mr. and Mrs. Belanger over to the house that evening. At different times I visited the Teviotdales, and inquired as to when Mr. and Mrs. Teviotdale would return from Europe, and they told me that they would return on Saturday, September 20th. This was the following day, the 21st. I fix it by that incident.

On cross-examination the witness testified as follows:

I have resided in Pasadena about three years. Before that I lived in St. Paul. The boy and girl, the daughter and son of Mr. and Mrs. Teviotdale, told me that their parents would arrive home on the 20th. I visited their home quite frequently. Within the last few days I have discussed this matter with my father, we just discussed it back and forth between ourselves. Mr. Belanger was not present when my father and I discussed the matter.

TESTIMONY OF FREDERICK C. SCHIFFMAN, FOR DEFENDANTS.

FREDERICK C. SCHIFFMAN, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I am secretary and treasurer of the R. Schiffmann Co., which manufactures Asmador products. The R. Schiffmann mentioned is my father, Dr. Schiff-

(Testimony of Frederick C. Schiffman.)

mann, of Pasadena. Our business is an international business. I reside at 1800 Lincoln Avenue, Pasadena, California. I know Mr. Wood, and the Teviotdale family, and I know Mr. Belanger. I remember seeing Mr. Belanger on Monday, the 22d of September, 1924, at our factory. I fix that date by the fact that Mr. Wood had invited Mr. and Mrs. Belanger to dinner on Sunday, and Mrs. Schiffmann and [427] myself were both invited, but on account of the fact that I had to take my daughters—it was the opening of the collegiate school at Los Angeles, and my daughters had to leave, one that night and one the next day, for school, and we could not go to the dinner party on account of the fact that we had to pack them up and return them to this school at seven o'clock, under the rules, and so my wife asked to be allowed to decline the invitation on account of getting the girls off to school, and the fact that our servants had left. I am certain of that date. On the afternoon of Monday, the 22d, Mr. Belanger visited our office, and the relating of the present of the bagpipes—a small toy bagpipe, and I believe they call it a tamoshanter cap. Mr. Wood had told me about it, and told me the fun they had over it, and I asked him if they were trying to make a bonny Scot out of a Frenchman. That incident, and also, later on, the fact that Mr. Wood very severely injured his ankle, and we have to keep a record in our office, as we have state insurance—that record is there; I asked him to go to the state first aid office, but he

(Testimony of Frederick C. Schiffman.)

said it was not so bad as that. We have to keep that record.

On cross-examination, the witness testified as follows:

I didn't bring that record up here with me, but I can get it for you. I didn't think it would be required. That could not have been on Tuesday instead of on Monday, because I had a most harrowing automobile experience in Tuesday, when I took my other daughter to school, and I will never forget it. What happened to me on the Wednesday following that—well, I might ask you the question what happened to you on the 8th of June last, and you could not tell unless you could trace it by letters, or a check, or correspondence, or something like that. You can ask me questions for an hour, if you want to, and I [428] guess you will find that my mind is all right. I could probably trace myself on that Wednesday, through my correspondence.

TESTIMONY OF J. J. DOBSON, FOR DEFENDANTS.

J. J. DOBSON, a witness called on behalf of defendants, being first duly sworn, testified as follows:

On the 12th day of October, 1924, I was watertender, second class, U. S. Coast Guard, atached to the cutter "Shawnee." I was standing the 12 to 4 watch. I am certain about that. I stood the 12 to 4 watch in the morning, and also in the afternoon. I was relieved at the end of the 12 to 4

(Testimony of J. J. Dobson.)

watch that afternoon by water tender Schybinger, who testified here in this court. I am positive about that. I was here this morning, and I heard the testimony of the witnesses from the "Shawnee"; I am still positive that Schybinger relieved me at four o'clock. Wilheim was my fireman; I could not swear to the oiler, but I think it was Hansen. I came up from the fireroom that afternoon on that 12 to 4 watch. The "Quadra" was under tow at that time. I did not report to anyone before I came out of the fireroom. There is no custom to it, if you want to go up there you go up. We would not do that if we were getting bells, or working bells, or anything like that. We were not receiving bells at this particular time, the boat was proceeding on a steady course, as far as I know, the engines were turning over at the same rate of speed, there had been no changes. For at least half an hour there had been no bells or no changes at all. I stepped out on the deck just to get up in the air. There is nothing unusual in that. I left the fireman down there. I just told him I was going up for air for a few minutes. That was at two o'clock. There is a clock just inside the engine-room door, and I looked at it. My custom [429] with regard to stepping out on deck to take air during a watch below is that I generally step out and walk around the ship and go back in the other door. I generally do that when I am about half through the watch. I did not step up on deck on account of noticing the time at that time, but when I was going up I

(Testimony of J. J. Dobson.)

did notice that it was about two o'clock. I went out the starboard door of the engine-room and walked aft, and up by the quarter-deck and back on the port side. I walked between the towing bitts and the warrant officer's quarters. The warrant officer's quarters are next to the quarter-deck. In walking around there I knocked my hat off by bumping into the sounding wire. I looked at it. The sounding wire runs aft to the taffrail, in a pulley. I was not ordered off the quarter-deck at that time by anyone. I don't remember seeing the chief boatswain's mate stall there. He did not order me off the quarter deck, I was not ordered off. I walked around there without at all interfering with the towing rope. I saw Mr. Rothe there. He was connecting the lead in the end of the wire. I saw Schybinger back there. He was standing on the port side of the quarter-deck, along by the port rail, somewhere near the port rail. He was not interfering at all with the tow rope, he was on the opposite side. There were three or four other people there. I saw Ensign Morse at that time. He was on the boat deck, near the sounding machine. I walked forward on the port side and back in the boiler-room and down below to my post of duty. I came off watch at about five minutes to four, a few minutes to four, I won't say five. I have no written record of what watch I kept. No written record is kept of the watches that the men stand at sea. There is generally a piece of scrap paper hung up on the bulletin board in the engine-room

(Testimony of J. J. Dobson.)

assigning the watches. When I got off watch at four o'clock in the morning I slept until sometime [430] after ten. I was a little bit late for lunch, it was probably about 11:25, or something along about that time, that I had lunch. I went to the first mess. I saw Schybinger at the first mess. He was there when I got there, when I arrived. I could not say I remember when he left the mess hall. I left as soon as I got through, and I went down below and got ready to go on watch, changed my clothes and put on a jumper. I heard a shot fired. I was just then ready to leave the engine-room door to go forward to mess. When I heard the shot I looked forward to see what it was, and then I went forward in the engine-room. I was just coming outside then when I heard the shot, just at the engine-room door then.

On cross-examination, the witness testified as follows:

I have known Schybinger for quite a few years. He is not the first man I talked with on this case, I talked with a couple about it. I have not been with Schybinger for the last day or two; I was here in the courtroom with him this morning. I got up about 10:30, or some such matter, on Sunday, the day of the seizure. I washed in the petty-officer's washroom, and then went back to the engine-room; that means to the upper engine-room. At that time we had just left the "Principio." I was in the upper engine-room, reading. I stayed there all morning until the first

(Testimony of J. J. Dobson.)

mess was called. The boat was moving along at about standard speed. I don't know if they had sighted anything then, I paid no attention to it. I stayed in the engine-room, the upper engine-room, until between 11:15 and 11:30, when I came out. I came out on deck then and went forward to the mess-hall; I was in the alleyway to the mess-hall. I saw the "Quadra" then. We were just rounding her stern, we were a few boat lengths off. I went right on into the mess-hall; I just glanced at the "Quadra" as I went by. I was not particularly interested. I went in and had my lunch. Schybinger was already sitting [431] down. I didn't notice as to whether he was pretty well through his lunch. I saw Healy, the fireman, in there, and, of course, my fireman was there. That is all I recollect. There might have been some others in there. There was more than one table. The shot was fired just as I started in there. I had not got in there yet, it was fired before I went into the mess-hall. I did not see them fire the shot. I looked to see what they were firing at. I did not see it hit. We were probably by the "Quadra" at that time, probably a few boat lengths beyond the "Quadra." The "Quadra" was to our starboard. I probably remained at lunch about ten minutes. The fireman and I work in one room, it is a small room. My duties as water-tender are to see that there is water in the boilers, and to have the steam pressure up at all times. I take care of the fireroom. If anything would come with

(Testimony of J. J. Dobson.)

reference to a change in the steam, the engineer generally sings out to us what they are. With the fireman, I attend to them, whatever change is necessary. The fireman's duties consist of changing burners, changing tips in the burners, and keeping the fireroom clean. If I go upstairs for air I notify the fireman. It would be necessary to notify the fireman. We are not under orders to always notify the other man if one leaves to go up for air. I never heard of any order to that effect. I always do it. The fireman always notifies me. I have a very distinct recollection of going upstairs about two o'clock. I went up on the starboard side of the "Shawnee" and walked around to the port side; back through the starboard alley and across the forward part of the quarter-deck. That is what they call the main deck. The sounding machine is located on a deck above that. The wire that knocked off my hat did not hit my head, it just brushed my hat. I do not know that as a matter of fact that wire is [432] about nine feet above the floor; I don't know how high it is when it is tight. It was hanging slack. I noticed Mr. Morse and one or two others by the sounding machine, but I don't know who they were. I saw the quartermaster out aft handling the wire. His name is Rothe. I saw Schybinger on that round, too. He was standing on the port side of the quarter-deck, along the rail. I am positive about seeing Schybinger. I am not a member of the coast guard now. I left it on December 18, 1924. I got a dis-

(Testimony of J. J. Dobson.)

charge. I have not got it with me. It was dishonorable.

On redirect examination the witness testified as follows:

I was charged with neglect of duty, sleeping on watch. I went to sleep on watch while the vessel was tied up at pier 31, San Francisco. I am doing odd jobs now. The last was with the Williams & Marvin Shoe Co. I live at 937 Buchanan street, San Francisco.

On recross-examination, the witness testified as follows:

At the time I refer to, when the boat was tied up at Pier 31, San Francisco, there was steam in the boilers, and fire under them. I was the only one down there. The heat, I expect, put me to sleep; also quinine and whiskey.

The COURT.—Have you, Gentlemen, anything further?

Mr. GREEN.—Nothing further, your Honor.

The COURT.—Both sides rest?

Mr. GILLIS.—The Government rests.

Mr. FAULKNER.—At this time, if the Court please, on behalf of all the defendants, jointly and severally, I move for the suppression of all of the exhibits, made at the time of the close of the prosecution's case. If the Court will permit it, and if agreeable to Mr. Gillis, may the motion to suppress the evidence [433] in which I referred to all the exhibits, be considered as renewed and made at this time?

Mr. GILLIS.—Certainly, that is perfectly agreeable.

Mr. FAULKNER.—I would like to supplement that particular motion, if the Court please. I would ask the Court at this time, both sides having rested, to exclude from the record the evidence concerning the speed of the "C–55." At the time of the admission of that evidence in the record the Court will recall a legal objection was made to its introduction. I do not desire, unless the Court desires me to, to indicate the legal proposition that was involved in that objection, which was ruled on at that time—

The COURT.—It is considered as made upon the same ground, Mr. Faulkner.

Mr. FAULKNER.—Yes, your Honor.

In addition to that, if the Court please, I desire again, on behalf of each and every defendant, jointly and severally, and the motion may be, I take it, considered to be made on behalf of each defendant individually as well as jointly, that the Court at this time instruct the jury to acquit the defendants, each and every, all and singular the the defendants present under this indictment; that motion will be based upon all of the grounds set forth in the motion for a directed verdict directed to the Court's attention at the time of the conclusion of the Prosecution's case, as though I again read it in full; may that be stipulated, Mr. Gillis?

Mr. GILLIS.—Yes, certainly.

Mr. FAULKNER.—The first reason being that the evidence is insufficient as to each and every,

and all and singular the defendants, jointly and severally, to warrant, or upon which the Court could base, or the jury could base, a conviction. I [434] know with what thoroughness the Court has considered this matter at a prior time, and I think that the matter was presented with some degree of thoroughness on the part of the defendants; if the Court desires any additional thoughts that I have on the subject presented here at this time I will be pleased to do it; particularly one authority of the Supreme Court of the United States, which holds that a charge of conspiracy outside of the territorial limits of the United States cannot be had under the laws of the United States.

The COURT.—The motions are both denied.

Mr. FAULKNER.—Exception as to all the defendants jointly and severally.

The COURT.—Now, you have some consideration to present with relation to the question as to whether or not the position of the ship should be submitted to the jury.

(Discussion between counsel and Court.)

Is the question of jurisdiction one for the jury?

Mr. FAULKNER.—It is necessary for the jury if the absence of jurisdiction means innocence and the presence of jurisdiction means guilt.

The COURT.—That does not meet my question. The question as to whether or not this Court has jurisdiction to try these defendants, is that for the jury or for the Court?

(Further discussion, in which all counsel and the Court joined.)

I wish you would see if you can find me any authority. It is all right to get some law out of your heads, but I would like to know if the Courts have had anything to say about it.

Mr. GREEN.—We will make a diligent search, your Honor, and I hope the district attorney will, also. [435]

The COURT.—Have you anything further to present, Gentlemen?

Mr. FAULKNER.—Yes, your Honor. This is to be addressed solely to the question of whether jurisdiction is a question of fact for the jury, or a question of law for the Court.

In the case of United States vs. Jacklaw, 1 Black, 487 and 488, the Supreme Court of the United States held that it is the province of the jury to determine the facts relative to the matter of jurisdiction.

In the case of United States vs. Richards, 149 Fed. 455, the Court submitted to the jury the facts relative to jurisdiction, and instructed that a verdict of not guilty be given if in the opinion of the jury the facts on which the prosecution relied to show jurisdiction were not established beyond a reasonable doubt.

This was a case involving a charge of conspiracy.

In United States vs. Saunders, 27 Fed. Cases, No. 16,220, it was held that the question of jurisdiction is one for the jury to determine in a criminal case by general verdict of guilty or not guilty, and that the Court cannot decide the issue as being one of law alone.

In Lennan vs. Hamburg and American S. S. Co., 73 N. Y. App. Div. 358 and 361, it was held that a question of jurisdiction depending upon whether a collision between vessels occurred within or beyond the three-mile limit is one for the jury to determine, and not one for the Court to decide.

Questions of place or location are questions of fact for the jury.

That is a general citation, taken from the Ameri- and English Encyclopedia of Law.

The place of the commission of the offense charged presents questions of fact for the jury to determine in their verdict of [436] guilty or not guilty, and if the evidence does not prove beyond all reasonable doubt that the offense was committed at the place alleged in the charge, the defendant is entitled to a verdict of acquittal.

This is taken from Wharton's "Criminal Evidence." and Bishop's "New Criminal Procedure."

In both civil and criminal cases, where the evidence on the material points is conflicting, or where the facts being undisputed different minds might draw different conclusions from them, the question presented is one of fact for the jury. Many cases are cited. That, again, is a citation from the American and English Encyclopedia of Law.

By his plea of not guilty, the defendant puts in issue every element essential to the charge as laid, including the one relative to venue, as to which his plea in law is tantamount to a denial that the offense was committed at the place alleged. It is for this reason that the issue presented is one of fact for

the determination of the jury, as much as the issue pertaining to the commission of the offense, itself, in the charge specified. It is elementary law that every issue presented by the plea of not guilty is one for the determination of the jury, and not for the Court. Every fact essential to the case of the prosecution involved in the charge as laid, whether the fact is in dispute as a jurisdictional question, or not, is necessarily one for decision by the jury in its exercise of the power conferred upon it exclusively to determine the issue raised by the plea of not guilty, the issue being one that embraces every fact essential to the charge in this case. That is the position that we have heretofore taken. I think the authorities are abundant for a like decision in this case.

I would have presented your Honor with a copy of these, and [437] will if you desire later, but I did not have the time to prepare it.

The COURT.—No, I have taken a memorandum.

Mr. GILLIS.—As I understood it yesterday, if the Court please, the Court desired authorities simply on the jurisdiction as to the individual members taken from the "Quadra."

The COURT.—I think the question is not involved as to the others.

Mr. GILLIS.—No, your Honor. And as to those members, whether or not the Court would submit the matter to the jury, I have this morning one case particularly that I wish to call the Court's attention to, which cites and approves and follows several other cases laying down the same rule of law.

Your Honor mentioned yesterday some decisions with reference to a set of facts where a defendant was extradited from another country and brought into this country on one crime, and then tried on another—

The COURT.—I had in mind the blood money cases, and U. S. vs. Rausch.

Mr. GILLIS.—It is established as a fact that one country cannot extradite from another country for a certain crime, and then try that man on a different crime when he is brought into the country. That is based on the good faith between nations, and the treaty relationship between nations. The rule, however, as to individuals, and the jurisdiction of the Court over them is as follows, and this is a general rule that has been followed by all of these cases, that where a person accused of a crime is found in the territorial jurisdiction wherein he is so charged, the right to put him on trial for the offense charged is not impaired by the fact that he was brought from another jurisdiction by illegal means, such as kidnapping, unlawful force, fraud, or the like. That is the general rule. [438]

The COURT.—What case are you reading Pettibone and Heywood were arrested in Idaho. from?

Mr. GILLIS.—I read the general rule that is followed and set out in the Pettibone Case, when That is in 203 U. S. 192; 51 Law. Ed. 149. That rule is specifically declared to be the law in that case. Justice Harlan wrote the opinion. This

case is based upon he case of Ker vs. Illinois, 119 U. S. 436.

The COURT.—That was the Peruvian Case.

Mr. GILLIS.—Yes, that was the Peruvian Case, in which case a man fled to Peru, after having committed a crime in this country. They took out extradition papers. When the officer went to Peru he kept the papers in his pocket, he found his man on the street, and he forcibly abducted him, put him on an American ship and brought him to this country. That rule was held to apply to that case, or to any other similar case where the defendant is actually in the jurisdiction of the court. So that so far as the defendants that come from the "Quadra" are concerned the question of the exact location of this ship, when it was seized, and whether or not the seizing officers had a right to seize it, does not enter into the question of jurisdiction in any manner, shape or form. The complete answer under this rule is that the defendants are here in court, and were brought into this court. Under that rule, of course, there would be nothing to submit to the jury, so far as jurisdiction is concerned. I understood that that was the only question your Honor desired authorities on.

Mr. FAULKNER.—I did not understand that your Honor desired authority on a proposition that is conceded. I understood the Court desired to know whether the question of jurisdiction arising as an essential fact in the case, and which on first blush the Court would assume was a ques-

tion of law for it to [439] decide, can ever become a question of fact for the jury.

The COURT.—You are quite right about it.

Mr. FAULKNER.—I think the first authority that I read, the United States Supreme Court decision—the Supreme Court of the United States held that it is the province of the jury to determine the facts relative to the matter of jurisdiction. I do not think I need to distinguish the case Mr. GILLIS cited, because I think your Honor distinguished it yesterday, when you referred to the same principle that he announces this morning.

The COURT.—Of course, Gentlemen, the easy way would be to submit this question to the jury. When your difficulties arise due to the fact that there are so many courts and so many different decisions throughout the whole length and breadth of the land on so many different questions, frequently an abandonment of the recent decisions of various courts on any question, and a resort to the rules as laid down by the fathers will solve a difficulty. I read last night again the long opinion written by Chief Justice Marshall in the case of Aaron Burr, who was indicted for treason and for conspiracy to commit treason. Everybody, of course, is familiar with the dramatic facts of that trial, and what it led to, the political dissensions that it engendered, and, finally, to the death of Mr. Hamilton. The Chief Justice points out therein the clearest and most unmistakable language, that it is easily possible for a man to commit a crime within a jurisdiction, even though he

may never have been within that jurisdiction at all. It is perfectly apparent that that is in accordance with all the authorities, some of which were cited in the opinion which was written when this matter was submitted on the motion to exclude and to return.

The questions that arise with regard to the position of the [440] "Quadra," I take it, are purely and simply questions of law. It is not at all uncommon for the necessity to arise for the Court to determine questions of law in view of the facts. It is true that there are authorities to the effect that a matter of jurisdiction depending upon disputed questions of fact will be submitted to the jury, unless the questions submitted are purely and simply questions of law. The questions submitted are purely and simply questions of law. The questions that arise with regard to the position of the "Quadra" at most could only be two; first, is the evidence of the "Quadra" herself,—the liquor which it is alleged was seized upon her, her log, and things of that kind, admissible in evidence? Nobody would contend that that, even though it depended upon a disputed question of fact, is not a question for the Court; in other words, the Court is bound to determine whether or not evidence proffered is admissible, and it frequently has to determine questions of fact in order to determine that matter. In the final analysis, that is the only real question, this being a criminal prosecution, depending upon the position of the ship at the time of the seizure. It seems to me, however, that there were

questions in regard to the jurisdiction, and for that reason I suggested the argument, and I suggested the doubt that had arisen in my mind due to the decision of the Supreme Court in the Blood Money Cases, and U. S. vs. Rausch. Further reflection upon the subject convinces me that after all the question of jurisdiction, either of the person of these defendants or of the subject matter of the offense charged, is purely and simply a question of law. Now, taking the latter first, as to the offense charged, I hark back again to the decision of the Chief Justice. It is perfectly apparent, to my mind, at least, that the question of law with regard to the crime which is charged in this indictment, must be resolved in favor of the jurisdiction, for the reason whether [441] that ship lay 5.7 miles or 13½ miles from the North Farallones, that the crime, if there was a crime—which I do not say, but if there was a crime it was committed within the Northern District of California, for the very simple reason that nobody could, with any shadow of reason, contend that a man might load liquor upon a boat which was to be delivered within this district and not be a participant—indeed, under the statute, a principal—in the landing of that liquor. That, it seems to me, disposes as a question of law of the matter of jurisdiction of the subject matter.

So far as the jurisdiction over the persons is concerned, it is settled that it makes no difference how or when parties were brought within the jurisdiction, with the one single exception that under the rules of International comity, if a per-

son is brought within the jurisdiction by virtue of a treaty of extradition, they can only be tried for the crime for which they are extradited.

The rule that that is the only exception, and the distinction that as between extradition under the treaty and extradition extra the treaty, was pointed out in a decision which was handed down by the Supreme Court at the same time—on the same day—that they decided the Rausch Case.

In Ker vs. The People of Illinois, the Supreme Court said:

"It is idle, therefore, to claim that, either by express terms or by implication there is given to a fugitive from justice in one of these countries any right to remain and reside in the other; and if the right of asylum means anything it must mean this. The right of the Government of Peru voluntarily to give a party in Ker's condition an asylum in that country is quite a different thing from the right *in* him to demand and insist upon security in such an asylum. The treaty, so far [442] as it regulates the right of asylum at all, is intended to limit this right in the case of one who is proved to be a criminal fleeing from justice, so that, on proper demand and proceedings had therein, the Government of the country of the asylum shall deliver him up to the country where the crime was committed. And to this extent, and to this alone, the treaty does regulate or impose a restriction upon the right of the Government of the country of the asylum to protect the criminal upon removal therefrom."

The Supreme Court clearly draws a distinction between a case where a man is brought by violence, or outside the treaty, from a case where he was brought within the treaty.

The same rule is laid down with a full review of the authorities in Mahon vs. Justice, a decision by Justice Field, reported in 127 U. S. 704. There is particularly a quotation there of the language of the Chancellor of the State of North Carolina, quoted by Judge Field:

"The prisoner is charged with a felonious violation of the laws of this State. It is answered, that other persons have been guilty, in relation to him, of an outrageous violation of the laws of another State, and, therefore, he ought to be discharged." The Court goes on and points out that however he is brought in—provided he is not brought in by the very terms of a treaty—he may be tried.

The same rule has been frequently laid down in England. I need only refer to the celebrated case of Ex Parte Scott, 9 Barneswell & Croswell, 446 where the opinion is by Lord Tenterden, the Chief Justice, in which he points out that a woman who had been seized in Belgium, charged with perjury in England, brought there even in violation of the treaty, could be tried.

So far as the question of the subject matter is concerned, I [443] am satisfied from the evidence that there can be no doubt that the ship was within the limits prescribed by the treaty. The fact that the officers of the "Shawnee" fixed their position by bearings taken across compass,

and then again fixed their position by bearings taken by means of the pelorus, finding that the positions thus fixed were the same identical spot; and that, furthermore, they verified that for a third time by taking the soundings showing the depth of water to be that which was fixed by both of the bearings, across compass and pelorus, satisfies my mind, at least, in spite of the evidence to the contrary, that that was her position.

Of course, it must be apparent to anybody that there has been perjury in this case. Whatever my personal views may be in regard to it, the testimony that has been given here by the officers of the "Shawnee" and the testimony that has been given here by the two others that were produced, cannot both be true in regard to that sounding. I consider it is unnecessary to determine that question, for I am convinced that the Court is bound to take the evidence of the officers of the "Shawnee," at least as to their pelorous and cross compass bearings, and I so find. Therefore, the motion to submit the position of the ship to the jury is denied. The Court will find that the ship was seized within the limits provided by the treaty with Great Britain.

Mr. GREEN.—To which ruling we respectfully note an exception, and also to the Court's remarks.

The COURT.—You may proceed with the argument.

Mr. RIORDAN.—If your Honor please, at this time I desire to bring to the attention of the Court—

Mr. GREEN.—Just a moment, Mr. Riordan. I would like to ask the Court to instruct the jury to disregard the remarks of the Court in so far as they reflect upon the testimony of any witnesses upon either side. [444]

The COURT.—There was no intention to do that, Mr. Green; I said I specifically declined to find which side was committing perjury in this case. The decision, Gentlemen, is on a question of law, alone, as I shall hereafter instruct you. You are the exclusive judges of the facts, and of the weight of the evidence, and of the credibility of the witnesses.

Mr. GREEN.—Of course, your Honor has decided the question, but will you hear any argument on the question of the position of the ship?

The COURT.—I don't think I care to, Mr. Green. I am satisfied on that point.

Mr. FAULKNER.—If the argument, your Honor, were merely directed to the Government's case?

The COURT.—I understand that, Mr. Faulkner, and I have ruled on it. I don't care to hear any further argument.

Mr. FAULKNER.—Exception.

Mr. RIORDAN.—If your Honor please, when Mr. Green yesterday sought to introduce some new evidence, when you had previously allowed the Government to introduce evidence, I indicated to your Honor that I had only a formal objection, to which your Honor replied you wished to have all the evidence obtainable to be produced before this jury. At that time I had knowledge of some

evidence that I deemed that was material and competent for this jury, but I could not then connect that knowledge up to present it legally, and I refused to produce anything, or to make an attempt to produce anything that might be prejudicial, knowing that it could not be properly introduced. I have that evidence now, and I have it where I can properly present it to this jury. I would like to have your Honor view that particular phase of the evidence that I have, and I am satisfied that your Honor will feel my position is sound in asking that this case be reopened. [445]

The COURT.—Let me see it. You had better submit that to the counsel, Mr. Riordan.

Mr. FAULKNER.—May we ask that the jury be excluded while we argue this proposition, your Honor?

The COURT.—Yes, I think so. Gentlemen you will please retire for a few minutes.

Mr. FAULKNER.—The basic objection that I desire to call the Court's attention to, before an effort is made to identify this telegram which, of course, has not yet been offered, is that Mr. Riordan has wilfully presented this to your Honor, when every witness that knows of the conduct of Mr. Belanger left for Los Angeles. The men that could have been produced here perhaps to verify whether or not Mr. Belanger was in this city at this time have left. Mr. Riordan had this in his possession yesterday.

The COURT.—Mr. Riordan says that he was not able to check it up yesterday.

Mr. FAULKNER.—If he intended to endeavor to check it up to-day, he should have permitted us to have these witnesses remain. Here was Mr. Mackay, of Los Angeles, in constant communication with Mr. Belanger from May 28th and subsequently; and perhaps on that very day Mr. Belanger was in their office. I know of my own knowledge that in the month of June he was in there repeatedly.

Mr. RIORDAN.—Of course, the only thing, Mr. Faulkner, is this—and I didn't wilfully withhold anything, I took the chance that I might even never get this document in—

Mr. FAULKNER.—But we were entitled to have the people from Los Angeles and Pasadena remain until that fact could be disputed, in the event that it was offered in evidence. [446]

Mr. RIORDAN.—I am prepared to pretty near prove to your satisfaction, Mr. Faulkner, that communication with those people would have been to no avail in this instance.

Mr. FAULKNER.—You cannot prove to my satisfaction that the burden was not on you to permit me to have those men remain.

Mr. RIORDAN.—If the Court admits this, I feel, of course that Mr. Belanger and the counsel are entitled to some consideration, if your Honor sees fit to admit it.

The COURT.—Mr. Riordan, if I admitted it I would certainly, if these gentlemen claim that Mr. Belanger, for instance, was in Los Angeles at the time that this telegram is alleged to have been

sent for San Francisco, I would certainly have to take a continuance and give them a chance to present those people. I don't want to do that.

Mr. RIORDAN.—I don't wish to be presumptuous, your Honor, but I do feel that with the connections I have in this case, that when I have presented the witnesses, all the alibi witnesses that counsel can produce to say he was somewhere else will be of no avail. I have documentary evidence to show he was here.

Mr. FAULKNER.—I cannot testify to the fact, your Honor, but I know from examining the records of Flint & Mackay, that Mr. Belanger was in there on a date within two or three days of that, in connection with this oil proposition, the evidence as to which must satisfy everyone that that was his business. There were condemnation suits. He was served with summons and complaint in suits pending in New Mexico. And there were suits on labor claims. There are the accurate records of that office that are indisputable. The only friends Mr. Belanger has in the United States are in Pasadena and in Los Angeles; the others are in Edmonton and Vancouver.

The COURT.—How long would it take you to get those men [447] up here?

Mr. FAULKNER.—If those men know that he was there at that time, it would naturally take but a short time. We would have to consult with Mrs. Belanger. He may have been in Vancouver; he has been in Vancouver a number of times. As your Honor well knows, he has been in Canada since this indictment. He has been in Edmonton.

Mr. Belanger has immense holdings in Edmonton. He has had negotiations concerning the sale of his property, which have been going on a long time. He has consulted his lawyers in Edmonton and in Vancouver concerning them. In justice to Mr. Belanger, no representation could be made to your Honor as to the time to be taken. I think your Honor will appreciate that this evidence, coming as it does, puts us in a position where we could not possibly defend it unless ample opportunity is given us. If a trip was necessary to Vancouver, your Honor well knows that, using all speed and expedition, it would require ten days.

Mr. RIORDAN.—What would your Honor say to this state of facts: If on the date that the telegram bears on its face, on that very date, over his own signature—and his signatures have been heretofore proven, is the signature of C. H. Belanger on a register in a hotel in this city? What is the use of producing alibi witnesses? That is the state of this evidence. How can your Honor overcome that? It is a damaging piece of evidence.

The COURT.—I will allow you, gentlemen, ten minutes to consult with your client. Is Mrs. Belanger here?

Mr. FAULKNER.—Yes, I think she is.

The COURT.—I will take a recess for ten minutes.

(After recess.)

Mr. FAULKNER.—If your Honor please, I appreciate that this [448] is a matter resting in

the sound discretion of the Court. The papers that are to be produced to connect this telegram with Mr. Belanger have been in the possession of the prosecution for a great many days. The gentleman from the hotel that will identify his presence in San Francisco has been in attendance upon the Court for a great many days. I have talked to my client, and, without waiving any objections to any identification of the telegram, we can disprove that anything referred to in that transaction, in that telegram, is connected in any way with liquor in any shape or form. When I was in Los Angeles, going over this matter with other people, I telephoned to Mr. H. L. Williams, in Seattle, with the thought that if the evidence I produced was not satisfactory to your Honor, that he could come and explain the entire transaction concerning this oil deal. At this particular time I am advised that the derricks in connection with shipments to New Mexico, and lumber in connection with that, were being sent to New Mexico, and that subsequently the lumber was sold for freight charges. In the light of that situation, if your Honor lets that evidence go in, of necessity we should be entitled to explain to the jury the innocence of it. Your Honor will recall, on the admission into evidence of these other telegrams, the only theory for their admission was that they showed a criminal connection on the part of Mr. Belanger. I don't think I just indicated that they did not, I think I demonstrated it. I strenuously urge with all earnestness that

to permit the district attorney, after his case is closed, to put in evidence a telegram that he has had for a long period of time, and the identification of the presence of Mr. Belanger by a man who has been in attendance on the Court for a great many days, with a record that has been in the possession of the district attorney for a great many days, I genuinely believe, your Honor, is an abuse of the sound discretion [449] that I know your Honor will exercise.

The COURT.—The real difficulty, Mr. Riordan, is that counsel claims that the reference in that telegram he can prove to have been to something else than liquor. If that is so, it means a continuance, because, of course, I would not admit that without giving the defendants such continuance as was necessary, even if it were a month, to produce evidence to the contrary. If that kind of evidence is produced, it simply makes another conflict for the jury to determine.

Mr. RIORDAN.—I heard counsel's offer, your Honor, and I would seriously take it up with my associate and with Mr. Carr as to the offer there made in the record, as to whether we would not stipulate, as against this telegram, the evidence that he there states can be proven.

Mr. FAULKNER.—No, your Honor.

Mr. RIORDAN.—I am saying that I would seriously consider that from our standpoint. Mr. Faulkner, in his anxiety to protect his client, is a little over-suspicious. I am prepared to prove, although this is collateral to the issue here at this time, that this telegram came into my hands

yesterday, as I was coming into court, at which time, when I came in, I told Mr. Faulkner I hoped to be able to prove, but could not prove, a certain document that I had. I have the witness in court now for the first time. The hotel man, who is here in court, was never at any time in court for this purpose until to-day. He was here to identify Mr. Belanger's signature in regard to other matters—other than telegrams, I believe—that I have heretofore introduced. This is no plot or plan on our part at all, your Honor.

The COURT.—Oh, no.

Mr. FAULKNER.—I apologize to Mr. Riordan.

Mr. RIORDAN.—Mr. Faulkner made himself quite outspoken to [450] me since the adjournment for the recess. I don't play the game that way, and I rather resent it.

Mr. FAULKNER.—It was made on the supposed statement that you had a telegram which you could not connect up. When the gentleman told me that he was in attendance on this court for the last three or four days, I had a right to believe that that was the purpose of his presence here. As for the stipulation—Mr. Williams, of Seattle, is a man that can clear the entire transaction for Mr. Belanger. They were intimate associates for a great number of months in connection with this proposition. The record of a railroad company as to the purchase and the shipment of merchandise to Farmington, New Mexico, is not a matter easy to get—the sale of that and the time of its delivery, etc.

The COURT.—Let me see that telegram again.

Mr. RIORDAN.—The man mentioned in the telegram is very significant, your Honor.

The COURT.—What is the explanation you expect to show?

Mr. FAULKNER.—I would expect to show, if the Court please, that if that telegram was sent by Mr. Belanger, the only business that Mr. Belanger ever had with Mr. Norgan was a business in connection with oil, and that at that particular time, a short time after Mr. Belanger had donated $12,000 to this cause, and was obligated to pay an additional sum—will your Honor pardon me, Mr. Belanger wants to speak to me.

The COURT.—Certainly, Mr. Faulkner.

Mr. FAULKNER.—That was their general association. Now, the extent of the proof that can be offered concerning their relationship, as your Honor knows, would be impossible to indicate. I think we should have the right to show the only association between these two men and what it can possibly refer to.

The COURT.—"Merchandise not yet reached market": What do [451] you expect to show in regard to that? The jury is not here.

Mr. FAULKNER.—The difficulty about that, your Honor, is one that refers particularly to lumber, whether it refers to derricks, or what it refers to, I cannot say now.

The COURT.—What is this, "Have appointment with Vince to-morrow"?

Mr. FAULKNER.—I don't know a thing about that.

The COURT.—Your explanation does not explain.

Mr. FAULKNER.—Wait just a minute, your Honor. Mr. Williams and Mr. Norgan, and the Mr. Vince referred to there—he was also interested in this proposition, which can be shown.

Mr. COGHLAN.—There had been some proposition of that kind made to him, to interest him in this same oil scheme.

The COURT.—What is the merchandise that had not yet arrived in the market? Does that refer to lumber that was shipped down to this oil place and that was sold for nonpayment of freight? That does not sound reasonable.

Mr. FAULKNER.—The difficulty there is, we cannot determine which particular phase of the oil proposition was in progress then. We do know that that particular telegram refers to oil, and we will demonstrate it.

The COURT.—I will hear the evidence on the admission of the telegram.

Mr. FAULKNER.—It won't be admitted until it is identified, your Honor?

The COURT.—Oh, no. You may be assured, Mr. Faulkner, that if you want one day, one week, or one month, whatever time is necessary for you to produce your evidence, it will be allowed. Call the jury back.

Mr. RIORDAN.—I will call Mr. Kitchen. [452]

TESTIMONY OF S. G. KITCHEN, FOR THE UNITED STATES (RECALLED).

S. G. KITCHEN, a witness recalled in behalf of the United States, testified as follows:

I am city manager of the Postal Telegraph Co. The telegram shown me, dated June 24, 1924, is from our official records. That was taken from the files and brought here by me personally. By examining this telegram I can tell that the message was taken, that is, the message was filed at our office in the St. Francis Hotel.

Mr. RIORDAN.—At this time I offer the telegram in evidence for identification.

(The telegram was here marked, U. S. Exhibit 61 for identification.)

TESTIMONY OF MRS. ELLA EDWARDS, FOR THE UNITED STATES.

Mrs. ELLA EDWARDS, a witness called in behalf of the United States, being first duly sworn, testified as follows:

In the month of June, 1924, I was night manager for the Postal Telegraph Company, at the St. Francis hotel. The telegram shown me dated June 24, 1924, I identify. I identify it by my handwriting that is on it, and I was there at that time. My handwriting is the address taken, and also the sending of the message. I sent the message over the wire myself. I know I sent it myself, because I have the number on it, and I have the signature of

(Testimony of Mrs. Ella Edwards.)

the receiving operator—the letters, and the time. I asked the one that filed the message his name and address, and I put it on the bottom of the telegram. That is my handwriting.

On cross-examination, the witness testified as follows:

I was shown this telegram last night. My recollection is based upon the display of that telegram to me. [453]

TESTIMONY OF C. W. CONNORS, FOR THE UNITED STATES.

C. W. CONNORS, a witness called in behalf of the United States, being first duly sworn, testified as follows:

On June 24, 1924, I was clerk at the Somerton Hotel, San Francisco. I know Mr. Belanger. The record now shown me is the register of the Hotel Somerton for Tuesday, June 24, 1924. That came from our official records at the hotel. I presented that personally to you this morning. The signature, "C. H. Belanger, L. A." was written by Mr. Belanger, himself.

Mr. RIORDAN.— I offer the Hotel Somerton record for the date indicated, Tuesday, June 24, 1924, particularly for the purpose of the signature, "C. H. Belanger, L. A."

Mr. FAULKNER.—We object to that as immaterial, irrelevant and incompetent, and no proper foundation laid. That objection applies as to all of the defendants.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

(The document was here marked U. S. Exhibit 62.)

Mr. RIORDAN.—I now offer in evidence the telegram heretofore admitted for identification.

Mr. FAULKNER.—I object to that, if the Court please, as immaterial, irrelevant and incompetent, and truly no foundation has been laid. There is no evidence whatever as to the identity of the sender of this telegram. The notation made by the young lady at the time of sending does not indicate that the person sending is the person whose name is written; it is merely the address that she wrote of some person who has not been identified. To get this telegram properly in evidence, there should be an identification of the person that sent it.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception. [454]

Mr. COGHLAN.—We offer the same objection, that there is no proper foundation laid.

The COURT.—The objection can apply to all the defendants.

Mr. RIORDAN.—I will read this telegram to the jury: (Reading:)

RUSH WIRE.

San Francisco, June 24/24.

"Geo. Norgan,

"Room 1052 Biltmore Hotel,

"Los Angeles, Calif.

"Merchandise not yet reached market. There-

fore cannot report anything different. Stop. Have appointment with Vince to-morrow who will make proposition in morning. Things shaping good. Regards.

C. H."

Mr. FAULKNER.—As we stated to your Honor, I ask a continuance and I want to put it at a minimum of a week, to prepare a defense to that telegram.

The COURT.—Very well, you may have it.

The COURT.—You may proceed, Gentlemen.

Mr. FAULKNER.—If your Honor please, I don't know that the record shows—in fact, I think it does not show—that we took an exception to the reopening of the case by the prosecution. I ask that the Court allow us an exception.

The COURT.—Yes.

TESTIMONY OF HENRY L. WILLIAMS, FOR THE DEFENDANTS.

HENRY L. WILLIAMS, called as a witness for defendants being first duly sworn, testified as follows:

My name is Henry L. Williams. I reside at this time in Seattle, Washington. I was in business in the State of California up to October, 1924. I have been in the oil business for the last ten or fifteen years, in New Mexico and Canada. Referring to the year 1924, I was in the oil business in New Mexico. I know C. H. Belanger. He was inter-

(Testimony of Henry L. Williams.)

ested with me in New Mexico. My association with Mr. Belanger in the oil proposition in New Mexico commenced in the latter part of January or the early part of February. Mr. Belanger was financing that [455] business. The source of his financing was his own personal money, and from some friends of his. The friends were in Los Angeles, San Francisco and Canada. When we began to discuss going into New Mexico, he said he had some friends that were interested in Signal Hill, whom he thought would become interested if the proposition was considered satisfactory. He also mentioned some friends he had in Canada that he could interest. He mentioned the name of Vincent Quartararo, who was operating in Signal Hill; a man by the name of Nard, who resided in Los Angeles and was operating in Signal Hill; a man by the name of Norgan, in Canada, I recognize this telegram handed to me of date February 21st. That is a telegram I sent to Mr. Belanger while I was in New York. I got this particular telegram from Mr. Belanger's files, the gentleman who is the addressee of the telegram; I got that within the last few days.

Mr. FAULKNER.—I ask that this telegram, dated February 21, 1924, be admitted in evidence. I will read it to the jury:

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(Testimony of Henry L. Williams.)

DEFENDANTS' EXHIBIT "R."

"New York, February 21, 1924.

"C. H. Belanger,

"1108 North Heliotrope Drive,

"Los Angeles, Calif.

"Raised fifteen thousand to sink well on the structure work start immediately stop our profit overriding royalty five per cent and half interest in property last profit independent of Jacobs wire me Southern Hotel, Baltimore. Think we might start work on raising more money on coast in about ten days stop will stop off at Farmington on my way back.

"H. WILLIAMS."

(The telegram was here marked Defendants' Exhibit "R.")

WITNESS.—(Continuing.) The original records of the oil company in connection with this transaction are in Farmington, New Mexico, and some in the office of Flint & Mackay, in [456] Los Angeles. I received a reply to the telegram that just has been read. The first one was received upon my arrival in Baltimore and the second one was in reply to my wire. I recognize these two instruments. I got these from the files of Mr. Belanger. There is not any question in my mind but that they are the telegrams that I received. I got these from Mr. Belanger, I think it was yesterday.

Mr. FAULKNER.—The first one is on a Western Union Telegraph blank. It reads as follows:

DEFENDANTS' EXHIBIT "S."

"H. L. Williams,

"Care Southern Hotel,

"Baltimore, Md.

"Telegram and letter received. Very pleased of good prospects. Hoping you will be successful in Baltimore. Have seen Frisco party and believe that he could be interested. Stop. Expect to leave for Vancouver sometimes next week but will advise you. In meantime address all correspondence to Los Angeles. Best wishes.

C. H. BELINGER."

(The telegram was here marked Defendants' Exhibit "S.")

DEFENDANTS' EXHIBIT "T."

The other one reads as follows:

"H. L. Williams,

"Southern Hotel,

"Baltimore.

"Wired you last night that your letter was received; also have seen Frisco party. Feeling sure he can be interested. Stop. Pleased you have raised fifteen thousands, feeling satisfied that we can raised money on Pacific Coast. Stop. Have to go north soon, but if you are coming this way soon will wait for you to assist in financing. Best luck.

C. H. BELANGER."

(The telegram was here marked Defendants' Exhibit "T.")

(Testimony of Henry L. Williams.)

WITNESS.—(Continuing.) The "Frisco party" who is referred to in that telegram is Vincent Quartararo. Mr. Quartararo was not interested in this proposition at that particular time. [457] Mr. Belanger, Mr. Nard, and Mr. Norgan and associates were interested in the proposition in its inception, that is, February, March, April, etc. I first met Mr. Norgan at the Fairmont Hotel in this city in the month of March. At that time he indicated that he would become interested in this oil proposition. He was to contribute $20,000. He was to have an interest in certain property which was identified as Well No. 7. We received money from Mr. Norgan. The money was sent to Mr. Belanger, but through some delay—it was wired to him at the First National Bank at Hollywood, and they were four or five days trying to locate it, and it was located and transferred in the First National Bank from Mr. Belanger's account to mine. Subsequent to the receipt of these telegrams, there was some production struck at a place called Bloomfield, in the San Juan Basin, and I succeeded in acquiring some acreage there. When that discovery was made in Bloomfield, I advised Mr. Belanger of the fact.

Mr. FAULKNER.—I offer these telegrams in evidence. They are as follows:

"Farmington, New Mexico, April 26, 1924.
"C. H. Belanger,
"No. 1108 Heliotrope Drive.
"Los Angeles, Calif.

"Expect close lease deal, will let you know later stop Reported oil struck at Bloomfield about fifteen miles from Farmington, am going out will report later, everything going fine here, regards.

H. L. WILLIAMS."

"Aztec, New Mexico, April 28, 1924.
"C. H. Belanger,
"Care Somerton Hotel,
"San Francisco, Calif.

"Should come for five hundred and found also we furnish him car stop but consider him worth more stop number [458] three down two hundred and seven feet stop Bloomfield well looks like a producer. Am trying get some acreage on same structure. Have not closed up another deal yet. Have lawyer looking up titles in leases.

H. L. WILLIAMS."

"Aztec, New Mexico, April 28, 1924.
"C. H. Belanger,
"Care Sommerton Hotel,
"San Francisco, Calif.

"Am unable to include acreage near Lidecker well in deal for twenty-four hundred acres but think we should take this acreage as it adjoins the Ute reserve and is on structure the Government have issued their first notice of auction sale of Ute re-

(Testimony of Henry L. Williams.)

serve to-day. Auction will be held at Durango, Colorado, June tenth at two o'clock Stop Have closed deal subject to your approval on fourteen hundred seventy acres at one dollar per acre bonus and one-eighth royalty near Bloomfield well. Some of this acreage is within one mile of well and all on structure. Do not see how we can lose on this acreage. Stop. If satisfactory to you wire me at once and telegraph money to First National at Farmington."

WITNESS.—(Continuing.) I know that further effort was made to induce people who were associated with me in the basic proposition, and other people in the Bloomfield proposition. I left New Mexico in May, brought the records with me, and proceeded to form a holding company called the Metropole Oil Co. We were then going to form subsidiary companies. The Metropole was in the process of completion during the month of June. Mr. Teviotdale, who was one of the directors of the Metropole, left for the old country, and matters were more or less held up, so far as the Metropole was concerned. The Bloomfield was in my name, and we went ahead and proceeded to try [459] and interest—or Mr. Belanger did, to interest people in the Bloomfield field. The people who were interested in the basic proposition in New Mexico, which was in the course of operation in April, 1924, were not obligated in any other way to finance any other proposition. I afterwards acquired some acreage in Bloomfield, but the people in New Mexico

(Testimony of Henry L. Williams.)

were not able to finance that proposition. Mr. Belanger was interested in financing that acreage. There were other persons interested, or to become interested in it. They were Mr. Vincent Quartararo and Mr. Norgan. I discussed the Bloomfield acreage with Mr. Norgan in Los Angeles, in June, on the 22d of June. I fix that day because I went to the Biltmore Hotel and looked at the register. Mr. Norgan came to my house with Mr. Belanger. Mr. Norgan arrived at the Biltmore on the 21st and he was at my house on the 22d, which was Sunday. There was $20,000 due, of which $12,000 had been paid; I contended that the $8.000 was on call; Mr. Norgan contended that it was only payable when the equipment reached New Mexico. I wanted the money. I had ordered a lot of equipment in New Mexico, and made arrangements to get this equipment on the ground as quickly as possible, as there was some question—there was a question at that time as to whether the United States was going to issue permits. It was rumored around that they were going to grant permits wherever equipment was installed, and we were doing our best to get the equipment on our claims. At that particular time there was equipment en route from the places we purchased it to this oil field in New Mexico. I was very much concerned concerning that equipment. At this particular time that we were discussing this matter with Mr. Norgan, the sending of the equipment, there were a great many telegrams exchanged between me and the representative

(Testimony of Henry L. Williams.)

in New Mexico concerning equipment. The New Mexico representative was [460] Mr. Turner. He was there in part of May and in June. I had occasion to have all those telegrams copied by the stenographer in my office. The reason for copying them was that along about the 7th or 8th of July I became suspicious that there was something wrong in New Mexico; Turner's wire did not seem to me to be right. I received a wire from our attorney there. I recognize this instrument which reads, on top, "Telegrams from Len Turner, Farmington, New Mexico, to H. L. Williams"; also, "Telegrams from H. L. Williams, Los Angeles, to Len Turner." The telegrams indicated there as telegrams from Turner to me I actually received; those indicated as telegrams from me to Turner I actually sent. I got this paper from Mr. Belanger's files yesterday. The originals of these telegrams that I sent are in New Mexico; also the originals of the ones that I received myself are in New Mexico. New Mexico was our head office. I moved down from Los Angeles to New Mexico and took all those documents there. I had this made from telegrams that were on hand when I discovered that Turner was not stating facts. This instrument was made in Los Angeles.

Mr. FAULKNER.—I will offer this in evidence. I am not attempting to offer the letters in it. I will read one or two very short telegrams here; the rest counsel can read if they wish:

DEFENDANTS' EXHIBIT "V."

June 22nd:

"Ship by express to Gallup crank for twenty-eight machine."

June 23:

"Can you buy water pump lift on one hundred feet two-inch line when did crank leave city. Number one waiting for cement to set under mast. Two waiting on casing. Number three in line at eleven hundred and ninety-four. Expect oil sand within fifty feet. Looks very good five 382." [461]

June 26:

"Will assume operations on all wells except number two to-morrow. Number three should be ready to drill in within three days Will drop casing question until we hear from you Will use economical methods in all operations Four carloads of freight due in Aztec tomorrow. Will send complete report by mail twenty seventh."

July 4:

"Car broke down in Durango Will be out the fifth Setting eight and quarter casing number three four five twenty Validation almost through."

Telegrams from Mr. Williams to Len Turner:

June 24:

"Star Drilling Company expressed crank and shaft this morning Should be in Gallup tomorrow sometime Express prepaid Keep me fully advised as to progress of number three Am greatly interested."

(Testimony of Henry L. Williams.)

June 25:

"Get Dehart to help you make up statement of all outstanding accounts and forward here at once Advise me amount of money necessary to pay freight Please advise me what your money requirements will be as far in advance as possible Rig now at Durango Should be unloaded at Aztec for Newton claim Denver and Rio Grande Freight agent gave me rate two seventy-five per hundred. Will leave for there as soon as deal now about completed here is closed. We will give you bookkeeper establish definite payday and matters will run smoothly from then on."

(The document was here marked Defendants' Exhibit "V.")

WITNESS.—(Continuing.) The situation outlined in those telegrams was discussed with Mr. Norgan at that time, and the situation in regard to permits was also discussed. I indicated [462] to the gentlemen present at that discussion that it was doubtful whether the Government would issue a permit, whether we put the rig on there, or not, but that we would have to use that rig and we might as well use it as leave it lying idle, and suggested that we pay Mr. Norgan's syndicate something for the use of it. Mr. Norgan wanted to know where we wanted to use it, and I told him in Bloomfield. He said he would not mind taking a shot at it. Mr. Belanger stated that he thought Mr. Vincent Quartararo would be interested, and would take the matter up with him. I had already ordered the derrick

(Testimony of Henry L. Williams.)

and camp, and timbers, and a lot of pipe, and I needed the balance of this money. Norgan stated that he had stated to his friends that this money was not to be paid until the equipment was on the ground, and that he would not pay the money over until then. I was to notify Mr. Belanger when it was on, and he was then to pay the money over with regard to the completion of the first deal. In other words, the authority to pay the money was to come from Mr. Belanger. Mr. Belanger left for San Francisco either Sunday or Monday, and called me up on the long distance 'phone. I told him that the equipment had not arrived, and that part of the merchandise that was to be shipped with the rig was following as way freight, that is, local freight; it was not a shipment in a carload lot. He said at that time that Mr. Quartararo was interested. He stated that he would have to notify Mr. Norgan that the equipment was not there. I bought this equipment from the Henry Supply Co., at Santa Paula. Some of the supplies that were bought from Henry & Endicott or Mr. Henry, were supplies in which Mr. Norgan was interested, they were for his particular well.

On cross-examination, the witness testified as follows:

I was operating in oil in Canada. I went to Canada in 1904 and I left there in January, 1924. My headquarters were Edmonton, [463] Alberta. I have been in Vancouver once or twice, for a few days. I am not acquainted at all around Vancouver.

(Testimony of Henry L. Williams.)

I know a few people there, very few. I never met Mr. Belanger in Vancouver, to my recollection; I am quite positive I never met him there. I met Mr. Belanger in Canada first in 1907. I lived next door to him. I knew him fairly well, and continued to know him fairly well up to the time Mr. Belanger left Canada. He left Canada before I did. He told me he left Canada three years before I did. I was drilling up in the Peace River from 1918 up to 1924. I left there in 1923. I was away from Edmonton practically all the time. My first conversation with Mr. Belanger with reference to these oil fields in New Mexico was in January, 1924. I happened to run into Mr. Belanger in the Alexandria Hotel lobby. He wanted to know what I was doing in that country. I told him I had left Canada, and that I thought possibly I would go over to Java. We talked over old times. He invited me out to his house. He took me out and showed me some real estate that he had. He told me that he thought I had made a great mistake in staying in Canada so many years. He took me out and showed me Signal Hill, and what I had missed, etc., etc. He was interested in Signal Hill. I did not then interest him in my oil fields in New Mexico, that was a few days later. I had not been in Los Angeles since 1899, and I ran into some old friends of mine. I used to operate in Los Angeles. They wanted to know where I had been. After I had met a friend of mine who explained about New Mexico, then I told Mr. Belanger and Mr. Belanger said that if I was satisfied

(Testimony of Henry L. Williams.)

to go into New Mexico that he would not mind going in with me. That was the latter part of January. There was a man in Los Angeles who had a large amount of acreage in New Mexico. I was trying to make a deal for this acreage. It [464] involved the drilling of at least four wells. Mr. Belanger was willing to finance two of them at that time, and stated that he had some friends that were interested in Signal Hill, in the oil game, understood the oil game, and he thought they would be quite willing to go into this proposition. He told me there was a Mr. Vincent Quartararo at the head of his syndicate, that he operated in Signal Hill, and a Mr. J. B. Nard, at the head of another syndicate that was in there drilling a well. He mentioned some people in Canada. He mentioned Mr. Norgan and a man by the name of Rogers who lived up in Alberta. I did not know Norgan at that time, I had never heard of him. I do not recall that he mentioned any others, unless he mentioned Mr. Teviotdale, and possibly a Mr. Short, who had been interested with him—an attorney at law in Edmonton, and a Mr. Cross. That is all I can recall at this time. He said that Mr. Quartararo was the head of a syndicate that was drilling a well in Signal Hill. I am not positive whether he said that Mr. Belanger was interested in that with Mr. Quartararo, or in the Nard Syndicate, but he did say that he and Mr. Teviotdale owned, I think it was, four units of $1,000 each in one of those syndicates, either Mr. Quartararo's or Mr. Nard's. I had not

(Testimony of Henry L. Williams.)

known Mr. Nard before. I met him after that time at the Biltmore Hotel, some time after that. That was upon my return from my eastern trip, approximately some time in March, 1924. I met him with Mr. Belanger. Mr. Norgan was not there. I had some talk with Mr. Nard. He did not tell me what his business was at that particular time. He did not say he was from Canada, he didn't say where he was from. I did not know at that time where he was from. I saw Mr. Nard in Seattle about six weeks ago. I believe he lives in Los Angeles. I do not know what his business is at the present time. [465] He was building some courts, I believe the*m* called them Lemon Grove Courts; in fact, we were going to rent one of them. He was fitting them up and selling them. He had a thousand acres of land down in San Diego. I never heard him mention the liquor business, or his connection with any liquor business. I do not know where he is to-day. These telegrams that I have referred to, I got those yesterday at Mr. Belanger's apartment. I went down to Los Angeles on Saturday for the purpose of going through the files that were in the office of Flint & Mackay; I went through those, and then went out to Mr. Belanger's apartment in Los Angeles. He just opened the files and we went through them; I guess we were both working on the files, they were spread out there on a table. Naturally, we had some conversation at the time, he told me of this case, and asked me if I would come up and identify these telegrams that

(Testimony of Henry L. Williams.)

came out of his files. Mr. Quartararo's name was mentioned in January or the early part of February. Belanger said he thought he could get some money from him or interest him to put some money into this New Mexico deal. He did not indicate how much money he might possibly get from him. I don't remember whether he said Quartararo was pretty well fixed with money. He said that Quartararo was interested in the Signal Hill, at the head of the syndicate. It cost about $250,000 to drill a well in Signal Hill—well, from $100,000— He didn't discuss that that was Mr. Quartararo's only business, or what business he was in. I was interested at that time in seeing money put into this New Mexico proposition. I put just about $3,000 in it. My particular interest in the syndicate was my experience. I had a half interest in the first place. Mr. Belanger had the other half interest. The two of us owned the entire proposition. And Mr. Belanger, for his half, was to [466] secure the money end of it, and I was to put up my experience and knowledge of the oil game for the other half. I did not meet Mr. Quartararo, I never met him. I was in San Francisco and met Mr. Norgan. I was here two or three days. I did not meet Mr. Quartararo with reference to this business. I never have seen him; I could not tell you which gentleman here is Mr. Quartararo. About $135,000 was put into this New Mexico proposition. Mr. Belanger, himself, put in approximately $30,000. Mr. Norgan and his associates put in $20,000. I do not know

(Testimony of Henry L. Williams.)

that Mr. Quartararo put in anything. Most of this money that was put up was wired to the First National Bank in Farmington, New Mexico, subject to my order. I was the man that was handling the paying out of the money. The only way I knew Mr. Quartararo in this whole proposition was through Mr. Belanger, and what Mr. Belanger told me. I do not know who Mr. Norgan's associates were in this proposition. I understand Mr. Norgan lives in Vancouver or Victoria; I am not sure whether he said Vancouver or Victoria, I think it was Victoria. I do not know how many men were in the Norgan syndicate, I dealt solely with Mr. Norgan. There was no stock issued, the company was not completed. I transferred the property to Mr. Bowen, of the firm of Flint & Mackay, as trustee for the Metropole Oil Corporation. The Metropole Oil Corporation was to issue to Mr. Norgan a transfer of an undivided one-half interest in Well No. 7, the acreage covered by Well No. 7. I had not the slightest idea in the world as to who Mr. Norgan's associates were. Mr. Norgan, from his conversation with me, seemed pretty well interested in the deal. He did tell me that he had interested a number of his friends in Vancouver. I am quite sure he did not mention any of those friends to me. I saw Mr. Norgan on the 22d of June, 1924, [467] in Los Angeles. I never saw him after that day. I do not know when he left Los Angeles. I had a talk with him at that time in reference to this oil deal, and at the conclusion

(Testimony of Henry L. Williams.)

of that conversation there were some matters that were left undecided and they were left entirely in Mr. Belanger's hands. He was dealing with Mr. Norgan—not I. Mr. Norgan was Mr. Belanger's particular friend, and not mine. I had the actual handling of the running of the property in New Mexico. They were entirely under my control. Although Mr. Norgan may have been in Los Angeles until the 30th of June, I did not see him after June 22d. I knew where he was stopping. Mr. Norgan did not say he would like to talk over things again. So far as we were concerned, the conversation was closed on June 22d. Mr. Nard interested a man by the name of Miller—Jack Miller—J. Miller. I saw him a great many times. He had an interest that Mr. Nard assigned to him; he bought a part of Mr. Nard's interest. Mr. Nard was independent of Mr. Norgan, so far as the Norgan syndicate was concerned. I don't know what Jack Miller's business was. I never inquired. I would say that he put $10,000 into the concern at different times. I lived in Los Angeles from the 12th of May up until the 10th of July, and I came back in September and left on the 3d of October, 1924. I heard, I read it in the papers, that this Jack Miller is the same Jack Miller that was convicted recently in Los Angeles of a conspiracy to violate the liquor law. Operations were never begun in this Bloomfield oilfield.

(Testimony of Henry L. Williams.)

On redirect examination, the witness testified as follows:

The reason that this oil-field in New Mexico never actually began operations was that the man that we had down there went wrong, he was not attending to business, and he ran the property into debt. When I left in May, all of the bills were [468] paid with the exception of one or two small bills; when I got back there in July I found that the $17,000 that I had sent him had been wasted, and that the property was $36,000 in debt; when I advised Mr. Belanger and Mr. Nard to that effect they refused to go ahead with the proposition.

TESTIMONY OF HAROLD J. HENRY, FOR DEFENDANTS.

HAROLD J. HENRY, a witness called for the defendants, being first duly sworn, testified as follows:

I am in the oil supply business, associated with Col. F. C. Endicott, in Santa Paula. I have been in business there two and a half years. Our business consists in selling oil supplies, rigs, tools, equipment, camp, etc., everything pertaining to the drilling of a well; in other words, we are prepared to supply everything for a well. I know Mr. H. L. Williams, who just left the witness-stand. I had dealings with him in connection with supplying materials for a place in New Mexico. Those business dealings occurred in the latter part of May and June. He bought from us two complete rigs. I

(Testimony of Harold J. Henry.)

know Mr. Belanger, I met him in Los Angeles. I met him once more in Santa Paula, in May, the latter part, May, 1924, about the time this equipment was being purchased. Mr. Williams purchased from our company two complete rigs, and some goods that were sent up to me from Los Angeles, that were purchased from an oil well supply house in Los Angeles. The rigs I had myself, but they would not be complete without this other merchandise that I had to get from Los Angeles, and I bought that new. That is represented by these two instruments you show me.

Mr. FAULKNER.—Gentlemen, may I just refer briefly to these?

Mr. RIORDAN.—Yes. [469]

Mr. FAULKNER.—There is litigation pending concerning this shipment, and these papers are required in connection with an action in Mexico.

The COURT.—You can just state what they are.

Mr. FAULKNER.—Yes, your Honor. This is a freight bill of the Los Angeles & Santa Barbara Motor Express Co., covering iron rope sockets, blower, box-tool dies, tools, rope, reel wire rope.

The next is a bill from the Oil Well Supply Co., showing a sale to H. J. Henry, Santa Paula, California, of solid rope socket for 7/8 inch line; 2½ inch by 90 feet bell rope; drilling line; No. 7 Little Giant screw plate; No. 4 blower; No. 20 Beaver stock and die. This bill amounts to $628.80.

WITNESS.—(Continuing.) This document bearing at the head of it, "Uniform Straight Bill of

(Testimony of Harold J. Henry.)

Lading," and the figures $628.80, that is for goods from Los Angeles. When I received those goods I placed them on the car with the rest of the equipment. My instructions in regard to sending this equipment to New Mexico came from Mr. Williams, and were to get it on the car as soon as possible. There was no reason indicated for that, except something about a permit, some trouble about a permit —I really don't know what it was. Two of these uniform straight bills of lading are dated, June 3d and one of them is dated June 7th, one June 10th. There are just three of these. Only one car went out on June 3d. This is the original and this is a copy. After this equipment was sent I had occasion to hear from it again. I identify two notices from the Denver & Rio Grande Western R. R. System, both dated the 12th of August, and a communication by registered mail from the Denver & Rio Grande Western R. R. dated September 20, 1924. I received those in connection with that transfer of freight. [470]

Mr. FAULKNER.—I would offer these in evidence; if it is agreeable to the district attorney I would prefer to read them and then return them to the witness.

The COURT.—Yes.

Mr. FAULKNER.—This is a notice from the Denver & Rio Grande Western R. R. System, Denver, Col., August 12, 1924. Mr. Henry and Endicott, Santa Paula, Calif.

"About June 9, 1924, you made a shipment of oil

well machinery, Sou. 116,573, to H. L. Williams, which remains on hand at Aztec, New Mexico, undelivered. Consignee fails to respond to notices or refuses to accept account of on hand undelivered. Please take notice that if positive orders for disposition are not furnished and all charges paid—rush disposition—shipment will be sold for charges as provided by law. Request to return or deliver to another consignee should be accompanied by original bill of lading. Under Commerce Law and Bill of Lading Contract conditions, you are liable for the charges, as follows."

Then there is a waybill reference: "Covered by Santa Paula Way-bill No. S. P. 27. Dated June 9, 1924. Billed by S. P. Yours Truly, J. H. Miller, Agent."

"Carbon copy to H. L. Williams, Aztec, New Mexico, and Farmington."

The next notice is similar in form, except that the shipment is described as "Oil well machinery, S. P. 40838 to H. L. Williams which remains on hand at Aztec, New Mexico, undelivered."

Mr. GILLIS.—What is the date of the notice?

Mr. FAULKNER.—These notices are both dated the 12th of August, 1924.

The letter is from the Denver & Rio Grande Western R. R. System, dated September 20, 1924, addressed to Mr. H. L. Williams, Farmington, New Mexico; Aztec, New Mexico; 136 S. Wilton Drive, Los Angeles, California. [471]

"Mr. Henry Endicott,

"Santa Paula, Calif.,

"Gentlemen:

"There was shipped via the Southern Pacific from Santa Paula, California, June 3, 1924, several shipments of oil well machinery, rigging, and equipment, which he have on hand at Farmington and Aztec, New Mexico, unclaimed.

"Reference to the shipments as billed, cars, and all charges are given below.

"As we cannot allow shipments to remain on hand indefinitely, we hereby give formal notice in accordance with the laws of New Mexico that if the shipments are not accepted by the owners and all charges paid, we will proceed to sell same in accordance with the laws of the State of New Mexico.

"The shipments and the charges are as follows:

"Santa Paula to Farmington, Waybill SP–4 of June 3, 1924, N. P. car 69173, billed as a carload of drilling tools and oil well outfit. Transfer was made at Montrose to narrow gauge D&RGW cars 1642 and 9418. The weight amounts to 34,840 pounds; the freight charges amount to $1650.71, plus $4.50 diversion. As the shipment was received and notice given on June 28, 1924, the demurrage charges up to date are $328.00.

"Santa Paula to Durango, diverted to Aztec, Waybill 27 of June 9, 1924, Southern Pacific car 116573, billed as a carload of oil well material and outfit. Transfer was made at Montrose into nar-

(Testimony of Harold J. Henry.)

row gauge D&RGW cars 6032, 6070 and 9172. The weight amounts to 41,240 pounds; the freight charges amount to $1261.95, plus $2.25 diversion. As the shipment was received and notice given on July 1st, 1924, demurrage charges to date are $318.00.

"Santa Paula to Durango, diverted to Aztec, Waybill 34 of June 10, 1924, Southern Pacific car 40838, billed as a carload of oil well rig and equipment. Transfer was made at Montrose to [472] narrow gauge D&RGW cars 6217, 6018, 6089 and 6079. The weight amounts to 49,000 pounds; the freight charges to $1,499.40 plus $2.25 diversion. As the shipment was received and notice given on July 1, 1924, demurrage charges up to date are $318.00.

"Yours truly,

"J. H. MILLER."

WITNESS.—(Continuing.) Mr. Belanger was present at the time these goods were ordered. I had met him prior to that time. The approximate value of all the goods that I sold was $10,800. I received that money.

TESTIMONY OF J. A. COSTELLO, Jr., FOR DEFENDANTS.

J. A. COSTELLO, Jr., called as a witness for the defendants, being first duly sworn, testified as follows:

Mr. FAULKNER.—I might state to your Honor that this paper I hold in my hand purports to be a printed copy of a certificate for doing business

(Testimony of J. A. Costello, Jr.)

under a fictitious name. Mr. Gillis has agreed that there will be no objection to it on the ground that it is a copy and not the original.

WITNESS.—I entered into a partnership under the name "Group 16." Mr. Quartararo was in the group. The office of the company was in the Humboldt Bank Building, San Francisco. The property was in what is known as Signal Hill. It was the old Transfer 2, or 3, well, that we took over, and we called it Group 16. I identify my name on this paper; my attorney signed it for me. I know of the existence of this association. The name of the defendant Quartararo appears there.

Mr. FAULKNER.—I ask that it be admitted in evidence and marked our exhibit next in order.

(The document was here marked Defendant's Exhibit "W.")

On cross-examination, the witness testified as follows: [473]

I am a contractor—streets, highways, railroads, bridges, etc. I am in business here in San Francisco. Mr. Quartararo had a considerable interest in this oil-well, more than I had. If I recollect right now I think it was in the neighborhood of $14,000, or something along in there, or maybe a little more.

Testimony closed.

Mr. FAULKNER.—I think it is the duty of the defendants to again renew all motions made at the original conclusion of the close by both sides. If you will stipulate, Mr. Gillis, that the motions to

suppress evidence and the motions for directed verdicts may be considered to have been again made in full form, I think that will meet our requirements.

Mr. GILLIS.—That is perfectly agreeable to the Government, and we will so stipulate.

The COURT.—Yes. Motions denied.

Mr. FAULKNER.—Exception.

Mr. COGHLAN.—An exception on behalf of all the defendants, your Honor?

The COURT.—Yes, an exception for all the defendants.

(Thereupon the case was argued to the jury by the respective counsel, whereupon the Court delivered its charge to the jury as follows:) [474]

CHARGE TO THE JURY.

The COURT.—(Orally.) I regret very much, Gentlemen, that the necessities of this case have compelled me to keep you here for the very long time that you have been here. I particularly regret that it was necessary to take the continuance that we had for important as it is that the law should be upheld and those who violate it brought before a court and jury punished, if they are guilty, it is of vastly greater importance that persons who are charged with crime should have every opportunity to present any evidence they have to meet anything that may arise in the case and which may be material for the consideration of the jury. While the

case has been long and perhaps to a certain extent weary I feel satisfied that you will agree with the Court that neither side has in anywise delayed it in any manner not made necessary by the necessities of it, and that nothing has been presented by either side which was not fairly bearing upon the rather involved questions presented first to the court and in the last analysis to you. I feel, however, that you Gentlemen will not begrudge the time that you have spent here. The question presented before you is one of the most important that has ever been presented to any court in the land, not only to these defendants because, of course, they are the same as any men that are charged with crime, but to the Government and to the people of the United States as well.

What we may think about a law, Gentlemen, is of no importance; what we do under it transcends everything if this Republic is to endure. While it is true that men outside will and can and do express in writing or in speech, publicly or in private, their opinions with regard to the laws of the country upon the subject of intoxicating liquor no echo of that controversy must come through this door. You and I here under our oaths are [475] bound by the law as it is, not the law as we might think it ought to be. Perhaps it is unnecessary therefore to warn you that if there be any amongst you who are urgently in favor of the law against intoxicating liquor you must lay that aside and not in the slightest degree permit it to be an opinion in your minds against any of these defendants; likewise,

if there are any amongst you who feel that this law is an improper law, or that you are opposed to it in any manner, it is equally incumbent upon you to lay that aside and not consider it in the slightest degree.

Now, Gentlemen, preliminarily a word as to our different functions inasmuch as this is the first and I think it will be the only criminal case that you will try this term. I start out by reminding you that you are the exclusive judges of the facts in the case. With that province the Court has nothing to do.

The Court has never intended nor does it desire to influence you or attempt to influence you in the slightest degree as to any matter of fact arising during the progress of this long and involved case. Likewise, I want to warn you that you must carefully differentiate between the statements of counsel as to what the evidence is and your own recollection of it because it is for you to determine in the last analysis and to refresh your memory in such manner as you may desire as to what any witness has testified to from the witness-stand here.

If during the progress of the case the Court has taken occasion to ask any questions or have made any comments in passing upon any motion or any objection to testimony, or if hereafter during the progress of these instructions I shall have occasion to refer to the legal bearing of any evidence I want you to understand that I am not in any wise intimating [476] anything whatsoever as to the truth or falsity of any evidence, nor the credibility of any witness, those being matters exclusively for you.

Now, Gentlemen, while the facts are for you and while it is for you to determine in your calm and sober judgment, uninfluenced by feeling, prejudice or sympathy, as to what the evidence shows, your power of doing that is by no means arbitrary but must be done with calm deliberation. You are to determine whether or not a witness has sworn true or false by his appearance, his demeanor on the stand, his interest if he has any in the outcome of the litigation, whether or not his evidence is consistent with itself or consistent with the other evidence or admitted facts in the case.

There have been four of these defendants who have taken the stand in their own behalf, two of the officers, Mr. Harris, the First Officer, Mr. Evelyn, the Second Officer, Mr. Gisbourne and Mr. Sargent, two of the members of the crew. I instruct you that under our system of laws men are entitled to testify on their own behalf; and in weighing the testimony of those four gentlemen you must weigh it by the same tests and apply to it the same considerations that you would the testimony of any other witness bearing in mind, of course, their interest in the outcome of it.

On the other hand, Gentlemen, other defendants have not taken the stand on their own behalf. That is absolutely their privilege. Under our Constitution no man can be made a witness against himself. Under our system of laws and our Constitution if a man charged with crime prefers to stand silent and not take the witness-stand that is his privilege and no intendment or presumption of any kind is

to be indulged in against him for his failure to do so. In other words, as [477] to those defendants who did not take the witness-stand, I instruct you that their failure to do so is not to be considered in any manner against them and you are to dismiss that fact entirely from your minds.

The grand jury for this district has presented this indictment against these defendants who are on trial here, and it will be necessary for you to find a verdict of either guilty or not guilty as against all the defendants who are actually on trial, excepting only the defendant Max Ripstein. As to him, Gentlemen, the Court has determined that there is no evidence as to a matter of law to go to you and I therefore instruct you as to the defendant Max Ripstein that you will bring in a verdict of not guilty. As to all of the others the matter is entirely in your hands. And you, Gentlemen, untrammeled by anything except the evidence before you in the light of the law as I shall try to expound it to you, will determine with regard to their guilt or innocence.

The mere fact that the grand jury of this district has presented an indictment against those men is not to be considered by you in any manner as any evidence of their guilt. The indictment is a mere form by which under the provisions of the Constitution of the United States an accusation is presented against men, and under that accusation they are entitled to come before a jury of their own choosing for final determination of the facts. On the contrary, Gentlemen, before you can find these

defendants or either or any of them guilty the government must present evidence that satisfies your minds to a moral certainty and beyond all reasonable doubt.

The rule in civil cases, that the plaintiff may prevail by a preponderance or the greater weight of evidence, does not [478] apply at all to a criminal case. When men are charged with crime they stand before you in spite of the accusation clothed with the presumption of innocence. That presumption, Gentlemen, is not a mere form or figure of speech nor mere fiction of the law but is real evidence in their behalf. They stand before you presumed to be innocent until the Government has established their guilt to the degree that I have explained, namely, to a moral certainty and beyond a reasonable doubt.

A moral certainty, Gentlemen, is that condition which ordinarily produces conviction in an unprejudiced mind. By a reasonable doubt is meant that kind of a doubt which would ordinarily influence men in the most important affairs of their own lives. Of course, it does not mean any kind of a doubt because it is rare indeed that any case can be presented that is free from any doubt. It means, as explained to you, that if there is left in your mind a kind of a doubt which would cause you to hesitate in the most important affairs in your own lives as to any material fact necessary to convict these men, you must find them not guilty.

Now, Gentlemen, these men are charged with having entered into a conspiracy to violate certain laws

of the United States. One of those laws forbids the importation of liquor into the United States in the manner in which it is charged liquor was brought in here, and without payment of the duty; in other words, what is known as the Tariff Act of 1922.

The other law is commonly known as the National Prohibition Act, which prohibits the importation into this country, the sale, the possession and the transportation of intoxicating liquor fit for beverage purposes and containing more than one-half of one per cent of alcohol by volume.

Now, note in the first place, Gentlemen, that these men [479] are not charged with the violation of the Tariff Act of 1922, nor yet are they charged with the violation of the National Prohibition Act. On the contrary they are charged with having entered into a conspiracy to violate one or both of those laws. And however much, Gentlemen, you may be convinced from the evidence that any of these defendants have been guiltly of a violation of those two laws you cannot find them guilty unless you find that they entered into a conspiracy which I will now take occasion to define to you.

In that behalf, Gentlemen, something was said here in argument about there being indictments also on file charging these men with violation of the substantive laws, that is, the Tariff Act and the National Prohibition Act; that is, of course, no concern of yours or mine in this particular case. The law of the United States, adopted long ago, long before there was any Prohibition Act ever heard of,

made it a crime to enter into a conspiracy to violate any statute of the United States or to defraud this country. That is known as Section 37 of the Criminal Code of the United States. It reads as follows:

"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner, or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy is guilty," and so forth.

It is not difficult, Gentlemen, to understand what is meant by Section 37 which denounces a conspiracy. It is formed "when two or more persons agree to do an unlawful act; in other words, when they combine to accomplish, by their united action, a criminal or unlawful purpose, or some purpose not [480] in itself criminal or unlawful, by criminal or unlawful means; and the offense is complete when one or more of the parties so agreeing together does any act to effect the object of the conspiracy.

"To constitute a conspiracy, it is not necessary that two or more persons should meet together and enter into an explicit or formal agreement for an unlawful scheme, or that they should directly, in words, or in writing, state what the unlawful scheme is to be, or the details of the plan or means by which the unlawful combination is to be made effective. It is sufficient if two or more persons, in any manner or through any contrivance, come to a mutual understanding to accomplish the common and unlawful design. Where an unlawful end is sought to be effected, and two or more persons, actuated by

a common purpose of accomplishing that end, work together in furtherance of the unlawful scheme, such persons become conspirators, although the part which any one of them is to take in the conspiracy is a subordinate one, or is to be executed at a remote distance from the other conspirators.

"In determining the question of the existence of a conspiracy, you will take into consideration the relation of the parties to one another, their personal and business association with each other, and all the facts in evidence that tend to show what transpired between them at and before the time of the alleged combination, as well as the acts performed by each party subsequent to such alleged combination in respect to the subject-matter of the alleged conspiracy."

Conspiracy, Gentlemen, is rarely, if ever, proved by positive testimony. "When a crime is about to be committed by a combination of individuals, they do not act openly, [481] but covertly and secretly. The purpose of the combination is known only to those who enter into it, and their guilt can generally be proved only by circumstantial evidence. The common design is of the essence of the charge, and this may be made to appear when the defendants steadily pursue the same object, whether acting separately or together by common or different means, all leading to the same unlawful result.

"To constitute the offense of conspiracy which is made punishable by the statute, there must be not only the conspiring together by the parties, but the formation of the conspiracy must be followed by an

act done by one or more of the parties to the conspiracy to effect its object. So, if you should find that the defendants, or some of them, conspired together, as charged in the indictment, to commit the offense, you will then inquire whether the defendants, or either of them did any of the acts charged in the indictment as constituting acts to effect the object of the conspiracy.

"The act must be one, you will observe, to effect the object of the conspiracy. It must not be one of a series of acts constituting the agreement, or the conspiring together, but it must be a subsequent, independent act, following a completed agreement, and done to carry into effect the object of the combination. Such acts constitute what are known as overt acts in the law of conspiracy.

"If you find that a conspiracy existed, as alleged in the indictment, and that some one or more of the overt acts were committed, as alleged, the question then follows: Were the defendants on trial, or some of them, connected with that conspiracy as parties thereto? Mere passive knowledge of [482] the illegal action of others is not sufficient to show complicity in the conspiracy. Some active participation is necessary. Co-operation in some form must be shown. There must be intentional participation in the transaction, with a view to the furtherance of the common design and purpose. To establish the connection of either of the defendants with the conspiracy, such connection must be shown by facts or circumstances, independent of the declarations of others; that is, by his own acts, conduct

or declarations. And, until this fact is thus established, he is not bound by the declarations or statements of others. The principal of law and rule of evidence is that when once a conspiracy or combination is established, and a defendant is shown by independent evidence to be a party thereto, then he is bound by the acts, declarations and statements of his coconspirators done and made in furtherance of the conspiracy."

That applies only, Gentlemen, to acts or declarations made during the continuance of the conspiracy. And any act or declaration done or made by any one of the conspirators after it is ended is binding upon himself and not upon the others.

Now, with that long definition of what constitutes a conspiracy, Gentlemen, what is the nature and gist of the charge here.

The indictment in effect charges that a certain corporation formed in a foreign country, to wit, the Dominion of Canada, entered into a plan by which liquor was to be shipped at sea ostensibly and under the provisions of her manifest for delivery in another foreign country, to wit, Mexico. It is charged that that was a mere cloak or blind and that the real intent and purpose of the shipping of the liquor by various [483] vessels plying out of the harbor of Vancouver was to lie off the coast of the United States and to land the liquor illegally and unlawfully upon our shores.

It is then charged that in effect Captain Ford, the Chief Officer Mr. Harris, the Second Officer Mr. Evelyn, and members of the crew of the "Quadra"

loaded upon that vessel a large quantity of intoxicating liquor, the manifest providing that that liquor was for delivery at La Libertad; that it was the intent and purpose however for that ship to come as close as she dared to the Coast of California and to deliver that liquor by means of small boats plying from the ship to the shore in the State of California for distribution and sale to our citizens.

It is charged that two persons residing, or at least one of them residing in the State of California and the other sojourning here, and other persons who are not brought before the court, were the means or agency by which that scheme was to be carried out to its end. In other words, that they were to provide the vessels by which the liquor was brought from the ships to the shore, and to provide for its sale and distribution after it was landed on the coast of the State of California.

Now, Gentlemen, if that be true then I instruct you that every person who in any manner participated in that scheme was guilty of the conspiracy as charged in the indictment.

There was a large amount of evidence presented here in this case at the beginning of it bearing upon the question as to where the ship "Quadra" was at the time that she was seized; that is to say, whether or not the ship was within the one hour steaming which is the distance the government of Great Britain has consented that her ships might be examined and [484] seized if they carry contraband. All of that evidence, Gentlemen, was admitted here for the information of the Court and the

Court alone so that the Court might determine the question of law as to whether or not the liquor which is alleged to have been seized upon the "Quadra" was properly admissible in evidence; and furthermore whether or not this court had jurisdiction of the crime charged and its subject matter, and likewise, of these men who are all citizens of a foreign government and were sailing under a foreign flag. The Court has determined that matter and it is therefore not before you in any manner at all. The evidence in regard to that you are to dismiss from your minds except for one very narrow purpose which I will hereafter endeavor to describe to you.

Now first, Gentlemen, as to the captain of the ship "Quadra"; If you find from the evidence, Gentlemen, that Captain Ford took command of the steamer "Quadra," loaded her with intoxicating liquor, sailed her to the neighborhood of our shore and there proceeded to cause the liquor to be disembarked from her hold into the small vessels and brought to the coast of California, and if you find at the same time that he did that in conjunction with or in understanding with any person whomsoever then you must find him guilty of the crime as charged.

It makes no difference, Gentlemen, so far as Captain Ford is concerned whether or not he believed that it was legal or illegal to deliver liquor from the sides of his ship into the small boats for delivery here. The Court holds that it was illegal. Therefore whether he knew it, or not, is of no consequence.

So far as the first and second officers and members of the crew are concerned, however, Gentlemen, the situation is [485] somewhat different. If you believe from all of the evidence that either Mr. Harris or Mr. Evelyn or the members of the crew embarked upon that ship at Vancouver with knowledge that her shipping articles and her manifest were but a blind to cover an illegal purpose, and that while they shipped for a voyage to Mexico and back that as a matter of fact they knew they were to come opposite the Golden Gate and there hove to and deliver the liquor to our shores, they or any of them then that you may find knew that are guilty. If, however, you believe from the evidence that either the first or second officer or the members of the crew at the time they shipped and at the time the vessel left Vancouver believed that her manifest and her articles were really her purpose, and that she really intended to go to Mexico and return, then the next thing for you to consider is whether or not subsequently they acquired knowledge of the fact that she was engaged in the business of landnig liquor here contrary to our laws. But even if you should find that they were without knowledge of her purpose at the time she left but that subsequent thereto they discovered her illegal purpose that would not be sufficient to convict the officers and the members of the crew—outside of the captain—unless you also find that they had actual knowledge that the thing that she was actually doing was illegal. What I mean by that is this, Gentlemen: The first and second mate

are bound to obey the lawful orders of the master of the ship; the members of the crew are bound to obey the lawful orders of the captain of the ship, and they are bound likewise to obey the lawful orders of the first officer, or failing him on watch, the second officer. They are bound, Gentlemen, even to obey an unlawful order of the master and officers of the vessel unless they know that it [486] is unlawful. Mere suspicion that the captain or the mates are telling them to do something that is contrary to the law is not sufficient; they are bound to obedience unless they know that what they are doing is unlawful and therefore wrong. To sum up then in regard to the officers, other than the captain, and the screw, if you find, of course, that they knew the purpose of the ship when she sailed then you must find them guilty; but if you believe that they did not know the purpose when she sailed then you must determine the two questions, whether or not they subsequently found out her purpose was unlawful, and that they knew that it was unlawful.

Now as to the two men who were on the "C–55," Messrs. McKenzie and Pensotti: Whether you believe from the evidence that those men were taking liquor from the "Quadra," for delivery on shore, or whether you believe that they were merely transporting the liquor from one ship to another would make no difference provided you find that McKenzie and Pensotti knowingly assisted either the "Malahat" or the "Quadra" either in the transfer of liquor or the delivery here; in other

words, if you find that the "C-55" was out there for the purpose of bringing liquor in then I instruct you that they were assisting in the breaking of the law and that if they did assist in taking the liquor from the "Quadra" and bringing it in they were guilty of a conspiracy so to do. But if you find that they were merely moving liquor from one ship to another then you must find, in addition, that they knew that the purpose of those ships, or one of them, was to illegally land liquor upon the shores of California.

Messrs. Neilsen and Allen, defendants who were arrested on the boat "903–B": Evidence has been presented to you that the night before the "Quadra" was seized the "903–B" was [487] likewise seized, that she had aboard her certain cargo of liquor. If you should find from the evidence that the "903–B" procured that liquor from the "Quadra" or the "Malahat," or if you should find from the evidence that they procured it anywhere else, such as has been suggested, from the shores of Drakes Bay, knowing it to have been brought from either the "Malahat" or the "Quadra" then I instruct you that they likewise are guilty of this conspiracy. On the contrary, if you find from the evidence that they procured that liquor somewhere else then of course you must find them not guilty.

The Government charges, in effect, that the defendant Vincent Quartararo was in charge of the landing of the liquor which was brought down here by these various steamers. The Government charges

that it was Quartararo who engaged at least one of the boats to go out and bring the liquor in; likewise at least one of the boats to take out sacks in which to place liquor when taken from the cases. It is for you, Gentlemen, to determine from all the evidence whether or not that be true. If it be true and you so find that Mr. Quartararo was in charge or had anything to do knowingly with the engaging of boats or the landing of liquor, then he is guilty of a conspiracy and you must find him guilty accordingly.

Some of the evidence against the defendant Quartararo came from the lips of two men who have pleaded guilty here in this very case. If you should find that a conspiracy existed then I instruct you that the two Crivellos were co-conspirators, and while it is a rule of the United States that a man can be convicted upon the testimony of an accomplice alone yet it is equally a well settled rule that the testimony of an accomplice must be viewed with caution and subjected to a closer and more minute scrutiny than the testimony of other witnesses. [488] Therefore, of course, if you believe the testimony of the Crivellos, or either of them perhaps, then you may give it such weight as you think it may have bearing upon the question of the guilt or innocence of Mr. Quartararo and Mr. Belanger. In determining the question as to whether or not you will give credence to the testimony of the Crivellos you should apply, in addition to the instruction I have given you regarding accomplices, the usual tests of their manner, their

appearance, their interest in the outcome of the case, and so forth, and likewise whether or not in your opinion they have been successfully contradicted by the testimony of other witnesses; or if, on the contrary, in your opinion they have been corroborated by the other evidence in the case. All of that, Gentlemen, is for you to determine.

The Government has presented and the Court has allowed in evidence here certain dollar bills. There is evidence here of an expert on the subject of handwriting who testifies that some of the writing at least on the back of those bills is in the handwriting of the defendant Quartararo. You must weigh the evidence of an expert in the same manner that you would the evidence of any other witness, bearing in mind, however, that the purpose of expert testimony, as a great judge once said, was to afford a jury light upon a subject which is not commonly known or familiar to those persons who have not made the matter a subject of study or investigation. Therefore in determining whether or not you believe that Mr. Quartararo wrote the list of liquor upon the backs of the bills here you will weigh the testimony of Mr. Heinrich in the light of what seems to you to have been his qualifications and in the light likewise of the reasons that he gave for his opinion, and whether or not that evidence is consistent with [489] the other evidence in the case.

Now, Gentlemen, if you find that Mr. Belanger had to do with the plans for sacking and landing this liquor as testified by the Crivellos then I in-

struct you that that would constitute him likewise a conspirator in the case.

Something likewise has been said here to the effect that the two Crivellos are admittedly guilty of felonies. Under our system of law a man who has been convicted of a felony, or has pleaded guilty to it, can testify. Evidence in regard to his having been convicted or pleaded guilty to a felony is admitted solely as bearing upon the question of his credibility. If in spite of the fact that they have pleaded guilty to the conspiracy charged here you believe that they, or either of them, are or is entitled to full credence then you will determine whether or not their testimony is in accordance with the other evidence in the case.

Finally, Gentlemen, something has been said here about these men on the "Quadra,"—the captain, the officers and the crew—having violated the laws of their own country. It was in evidence here that they had transshipped this liquor to these small boats for landing upon this coast. Now, Gentlemen, these men are not charged with the violation of the laws of Canada, as of course they could not be in this court; neither are they charged with having conspired to violate those laws. So that the fact that they may have committed a crime against the laws of Canada by delivering this liquor contrary to their manifest and shipping articles is to be considered by you only for one narrow point, and that is as bearing upon the question as to whether or not these defendants, that is, the captain and the crew of the

"Quadra," had any knowledge that they were doing an act which [490] was unlawful under the laws of the United States.

The landing of liquor, Gentlemen, in the manner that has been testified to here is a crime against our laws. The mere fact, if it be a fact, that the liquor was delivered upon the high seas to small boats for delivery here renders it none the less a crime subject to the jurisdiction of our courts, the determination of our juries' final judgment and sentence. Therefore as you have been instructed before, if any of these defendants whom you may find knowingly participated in that crime, if you find that there was such a crime, and likewise find that there were acts done in pursuance of that understanding or agreement, then such defendants as participated in it and were parties to it, in your sober judgment are guilty here.

Gentlemen, I cannot forebear a final word. There was a great Frenchman came to these shores a great many years ago and wrote a book that he called "Democracy in America." One of the most pregnant sentences of his final judgment after a survey of all of our institutions was that the final fruit and flower of civilization is to get twelve men in a jury-box. The Court and the Government, Gentlemen, look to you. You are the defense of the Government to see that its laws be not violated; you are likewise the shield and buckler for the defendants to see that they be not unjustly accused, or, if they be unjustly accused

that they be not wrongfully convicted. And as between those two you are to determine the question soberly, calmly, with no prejudice or feeling of sympathy, and with no feeling of rigor toward these men.

It requires, Gentlemen, a unanimous verdict at your hands, I should state to you, Gentlemen, that when you take the indictment into the jury-room you will find that the captain [491] and crew of the "Quadra" are the first 23 men named in the indictment.

Mr. GREEN.—With the exception of one man, McLennan, who is not on trial to-day.

The COURT.—Oh, yes, Mr. Green, that is correct. The defendant McLennan is not on trial. Do I make that clear to you, gentlemen? Captain Ford, First Officer Harris, Second Officer Evelyn and the next 20 are members of the crew. "C–55"; McKenzie and Penosotti: "903–B"; Neilsen and Allen. I think that covers them all.

Any exceptions, Gentlemen?

Mr. FAULKNER.—I know the jury will indulge me and your Honor, too. We except to the failure on the part of the Court to give the instructions proposed and numbered 1 to 1–V.

We also except to the failure of the Court to give the instructions numbered 33 to 72, inclusive, except instruction No. 48.

We except to the giving of the instruction by the Court in which you start the instruction by stating: The charge under which these men are accused, and ending your instruction by saying, in

substance: This is the charge in the indictment. I understood the Court's instruction to be that the men were charged in the indictment with certain acts, which the Court recounted, that a corporation was formed—

The COURT.—You do not have to specify it, Mr. Faulkner.

Mr. FAULKNER.—The next is the instruction in reference to the position of the ship.

The next is the instruction of the Court dealing with the officers, members of the crew, and the captain, in which you stated that if they had the actual knowledge prior to embarkation of the acts that were thereafter committed that the [492] verdict should be guilty. I except to that, in conformity with our known position with regard to the law, which position we have heretofore announced.

I think that the instructions proposed cover fully the position we have taken on the question of the three-mile limit; we except to the Court's failure to give that instruction.

The COURT.—Yes, I think they cover it very fully.

Mr. COGHLAN.—Your Honor will permit me to except to the refusal of the Court to give that instruction which affects and relates to Exhibit 30 to and inclusive of Exhibit 37; they are with relation to those bills. Your Honor remembers the instructions which requested the withdrawal of those matters from the attention of the jury. And also the testimony of the expert witness as

laying thereon, and such other matters that affected it. Your Honor will allow me to reserve exception in that regard.

The COURT.—I think, Gentlemen, that I omitted one instruction that I should have given. I will give it now.

If you find that a witness has wilfully sworn falsely as to any material fact you may distrust his testimony as to everything else he has testified to.

Mr. FAULKNER.—Then I withdraw the exception on that particular instruction.

Mr. COGHLAN.—I think I have no further exceptions.

Mr. HENNESSY.—May it please the Court: On behalf of Allen and Neilsen I desire to except to your Honor's failure to give the 4th instruction requested on their behalf; also the 5th instruction requested on their behalf; also the 7th instruction requested on their behalf; also the 8th instruction requested on their behalf; also the 10th instruction [493] requested on their behalf; also the 11th instruction requested on their behalf. And also the following instruction which your Honor gave the jury: If you find that the "903-B" procured that liquor from the "Quadra," or the "Malahat," or if you find from the evidence that they procured it from any other place, knowing it had been brought from the "Malahat," or "Quadra," then I instruct you to find these defendants guilty. I would like to except to that instruction.

Mr. O'CONNOR.—On behalf of the defendants Pensotti and McKenzie *I desire to except to the* failure of the Court to give instructions 1 to 9 inclusive, and instruction 10, 12, 14, 16, 17, 19, 20, 21, 24, 25, 26, 28, 31, 32 and 33 as requested.

The COURT.—You may retire, Gentlemen. [494]

(Thereupon, at 3:55 P. M., the jury retired to deliberate upon its verdict and subsequently, at 9:00 P. M., the jury returned into court and found a verdict of guilty as to the following defendants on trial: Captain Ford, First Officer Harris, Second Officer Evelyn, Chief Engineer Mason; McKenzie, Pensotti, Allen, Neilsen, Quartararo, Belanger; and a verdict of not guilty as to the other defendants on trial.)

DEFENDANTS' REQUESTED INSTRUCTIONS.

THE DEFENDANTS GEORGE FORD, GEORGE HARRIS, J. EVELYN, AND CHARLES H. BELANGER, REQUESTED THE COURT TO GIVE THE FOLLOWING INSTRUCTIONS, WHICH WERE SUBMITTED TO THE COURT AND REFUSED BY IT, TO WIT: INSTRUCTION No. 1, No. 1a, No. 1b and No. 1v.

Instruction No. 1 was in the words following:

I instruct you that the evidence in this case is insufficient to warrant a conviction of the defendant George Ford, and you are therefore instructed

to return a verdict of not guilty as to the defendant George Ford.

Instruction No. 1a, Instruction No. 1b, and Instruction No. 1v were in the same form as Instruction No. 1, except that the names of the defendants George Harris, J. Evelyn, and Charles H. Belanger were substituted in the proposed instruction by them in place of the name George Ford appearing above.

INSTRUCTION No. 33.

I charge you that the steamer "Quadra" was a private vessel under the British flag.

INSTRUCTION No. 34.

I charge you that it is an admitted fact in this case that all acts and transactions on the part of the master, officers and crew of the "Quadra" were done and performed by them on the high seas at a distance from the coast of the United States, its [495] territories and possessions greater than three miles or a marine league; therefore, your verdict in this case as against defendants, master, officers and members of the crew of the steamer "Quadra" shall be not guilty.

INSTRUCTION. No. 35.

I charge you that it is an admitted fact in this case that all acts and transactions on the part of the master, officers, and crew of the "Quadra" were done and performed by them on the high seas at a distance from the coast of the United States, its territories and possessions greater than three miles or a marine league; therefore, your verdict in this case against defendant Belanger shall be not guilty.

INSTRUCTION. No. 36.

I charge you that if you believe from the evidence in this case that the steamer "Quadra" never came within a marine league or three miles from the coast line of the United States its territories or possessions, then your verdict as to the master, subordinate officers and members of the crew of the "Quadra" shall be not guilty.

INSTRUCTION No. 57.

I charge you that unless the Government has established to a moral certainty and beyond a reasonable doubt that the master, subordinate officers and members of the crew of the steamer "Quadra" came within three miles or a marine league of the coast of the United States its territories and possessions at or during the time of the existence of the claimed conspiracy then your verdict as to each of said officers, members of the crew and master shall be not guilty.

INSTRUCTION No. 38.

There is no evidence in this case that the "Quadra" was a vessel intended to bring liquor into the United States. [496]

INSTRUCTION No. 39.

I therefore charge you that unless the Government has shown to a moral certainty and beyond a reasonable doubt that the steamer "Quadra" was boarded and seized within a distance from the coast of the United States its territories or possessions which could be traversed in one hour by some other vessel intended to convey liquor from the "Quadra"

to the United States, then your verdict as to the master, officers and members of the crew of the "Quadra" and each thereof shall be not guilty.

INSTRUCTION No. 40.

I therefore charge you that unless the Government has shown to a moral certainty and beyond a reasonable doubt that the steamer "Quadra" was boarded and seized within a distance from the coast of the United States, its territories or possessions which could be traversed in one hour by some other vessel intended to convey liquor from the "Quadra" to the United States, then your verdict as to defendant Belanger shall be not guilty.

INSTRUCTION No. 41.

I therefore charge you that unless the Government has shown to a moral certainty and beyond a reasonable doubt that the steamer "Quadra" was boarded and seized within a distance from the coast of the United States, its territories or possessions, which could be traversed in one hour by some other vessel intended to convey liquor from the "Quadra" to the United States, then all evidence introduced in this case obtained on the "Quadra" is suppressed and you are to disregard the same as to the officers, members and master of the "Quadra."

INSTRUCTION No. 42.

I therefore charge you that unless the Government has shown to a moral certainty and beyond a reasonable doubt that [497] the steamer "Quadra" was boarded and seized within a distance from the coast of the United States, its territories

or possessions, which could be traversed in one hour by some other vessel intended to convey liquor from the "Quadra" to the United States, then all evidence introduced in this case obtained on the "Quadra" is suppressed, and you are to disregard the same as to the defendant Belanger.

INSTRUCTION No. 43.

I charge you that in order to find the master, officers and members of the crew of the steamer "Quadra" guilty, the Government must show to a moral certainty and beyond a reasonable doubt that the steamer "Quadra" at the time of its seizure was within an hour's sailing distance of some vessel other than the "Quadra," which was intended to convey liquor to the United States, its territories and possessions.

The burden therefore rests upon the Government to establish to a moral certainty and beyond a reasonable doubt that the "C–55" was a vessel intended to convey liquor from the "Quadra" to the United States, its territories or possessions; the Government must further establish to a moral certainty and beyond a reasonable doubt that the "C–55" could have traversed the distance between the place of seizure of the "Quadra" to the North Farallone in one hour, laden as it was and having in mind the water to be traversed and the condition of wind, weather and current.

INSTRUCTION. No. 44.

I charge you that if you believe from the evidence that the "C–55" was transferring liquor

from one ship to another on the high seas, your verdict as to the defendants masters and members of the crew of the "Quadra" shall be not guilty. [498]

INSTRUCTION No. 45.

I charge you that if you believe from the evidence that the "C–55" was transferring liquor from one ship to another on the high seas, your verdict as to the defendant Belanger shall be not guilty.

INSTRUCTION No. 46.

I charge you that evidence has been adduced on behalf of the defendants that the steamer "Quadra" at the time of its seizure was more than 13 miles to the North Farallone, the nearest of the United States possessions.

If you believe said evidence, or said evidence creates a reasonable doubt in your mind as to the position of the "Quadra," your verdict as to the master, officers and members of the "Quadra" shall be not guilty.

INSTRUCTION No. 47.

I charge you that evidence has been adduced on behalf of the defendants that the steamer "Quadra" at the time of its seizure was more than 13 miles to the North Faralione, the nearest of the United States possessions.

If you believe said evidence, or said evidence creates a reasonable doubt in your mind as to the position of the "Quadra," your verdict as to the defendant Belanger shall be not guilty.

INSTRUCTION No. 48.

I charge you that under the law, the officers subordinate to master and members of the crew of the "Quadra" were bound to obey the lawful commands of the master of said vessel.

INSTRUCTION No. 49.

There is evidence in this case that the "Quadra" delivered liquor to other vessels. I charge you that you cannot infer from this evidence that all of the officers and members of the [499] crew of the "Quadra" participated in such delivery. The burden rested upon the Government in this case to prove to a moral certainty and beyond a reasonable doubt as to each officer and as to each member of the crew that they participated in a conspiracy with knowledge thereof.

INSTRUCTION No. 50.

I charge you that unless the Government has established to a moral certainty and beyond a reasonable doubt that the acts done and performed by the members of the crew and subordinate officers of the master of the "Quadra," were done and performed with an intent to violate the laws of the United States as distinguished from obedience to the orders of the master of the "Quadra," your verdict as to the members of the crew of the "Quadra" shall be not guilty.

INSTRUCTION No. 51.

I charge you that in order to find the subordinate officers and members of the crew of the "Quadra" guilty of the offense charged in the indictment, the

Government must establish to a moral certainty and beyond a reasonable doubt that each subordinate officer and member of the crew that you find guilty actually participated in an attempt to violate the laws of the United States with knowledge at the time of participation that the laws of the United States were attempted to be violated.

INSTRUCTION No. 52.

I charge you that each member of the crew and in this case that all acts done and performed by the officers subordinate to the master and members of the crew of the "Quadra" were done and performed by them at a point greater than three miles or a marine league from the coast of the United States, its territories or possessions, your verdict as to said members of the crew and each thereof and said subordinate officers and each [500] thereof shall be not guilty.

INSTRUCTION No. 53.

I charge you that the proof that certain of the defendants were officers and members of the crew of the "Quadra" is not, standing alone, sufficient to warrant a conviction of said defendants or either of them.

INSTRUCTION No. 54.

I charge you that each member of the crew and each officer of the "Quadra" is entitled to have the evidence against him weighed and determined under the rules laid down by the instructions given and to be given by the Court.

INSTRUCTION No. 55.

With respect to the officers and members of the crew of the "Quadra" and each thereof, I charge you that participation in an act a part of a conspiracy, without knowledge of its existence, or knowledge of the conspiracy without participation therein, is not sufficient to warrant a conviction.

INSTRUCTION No. 56.

I charge you that if you find from the evidence in this case that any defendants members of the crew and officers subordinate to the master of the "Quadra" participated in delivering and unloading liquor from the steamer "Quadra," to other vessels pursuant to the orders of the master at a point more than a marine league or three miles from the United States, its territories or possession, and said members of officers and crew or either of them, did not have knowledge that said "Quadra" was within an hour's sailing distance of the vessels with which it was dealing from the coast line of the United States, its territories or possessions, and did not have an intent to violate any law of the United States, I charge you that your verdict as to such officers and members of the crew and each thereof shall be not guilty. [501]

INSTRUCTION No. 57.

I have instructed you as to the facts which the Government must establish as to a moral certainty and beyond a reasonable doubt in order to find the members of the crew and officers of the steamer "Quadra" guilty. I further charge you in this con-

nection that every fact which I have instructed you that you must find, you must find as to each member of the crew and as to each officer of the steamer "Quadra."

INSTRUCTION No. 58.

I charge you that the only evidence in this case connecting defendant Belanger with the commission of the offense charged is the testimony of accomplices.

INSTRUCTION No. 59.

I charge you that you should exercise care and caution in viewing the testimony of accomplices and that before a conviction be based thereon, such testimony should be convincing proof of the guilt of the accused.

INSTRUCTION No. 60.

In considering the testimony of accomplices I caution you about accepting such evidence without material corroboration, coming as it does from a polluted source.

INSTRUCTION No. 61.

A witness false in one part of his testimony is to be distrusted in others; that is to say, you may reject the whole of the testimony of a witness who has wilfully sworn falsely as to a material point.

INSTRUCTION No. 64.

I charge you that unless you find from the evidence that the subordinate officers and members of the crew of the "Quadra," at the time of the signing of the ship's articles or before the actual embarkation of the "Quadra" on the voyage indicated

[502] in the evidence, had knowledge that it was the purpose of the voyage to unload the cargo contained in the "Quadra" at a place other than its apparent designation, your verdict as to each of said subordinate officers and members of the crew of the "Quadra," shall be not guilty.

INSTRUCTION No. 65.

I charge you that if the acts and conduct of the master, subordinate officers and members of the crew of the "Quadra," or as to them or either of them, as consistent with their innocence of the offense charged in the indictment as with their guilt, then it is your bounden duty to acquit said defendants and all of them, or either of them, as to whom you shall so find.

INSTRUCTION No. 66.

I charge you that if the acts and conduct of the defendant Belanger depicted in the record is as consistent with the innocence of said defendant Belanger, as to the offense charged in the indictment as with his guilt, it is your duty to acquit the said defendant Belanger.

INSTRUCTION No. 67.

I charge you that if you believe from the evidence in this case that the subordinate officers and members of the crew of the "Quadra" were not conscious participants in this alleged conspiracy, if it was a conspiracy, then you must return a verdict of not guilty as to said subordinate officers and members of the crew of the "Quadra."

INSTRUCTION No. 68.

I charge you that if you believe from the evidence in this case that the subordinate officers and members of the crew of the "Quadra," acting in good faith, supposed that the "Quadra" was going to Mexico and not to this country, then they ought not [503] to be convicted.

INSTRUCTION No. 69.

I charge you that the subordinate officers and members of the crew of the "Quadra" were mere servants or employees of the boat and that their acts should be considered by this jury, keeping that fact in view, and if you do not believe beyond a reasonable doubt, that they were conscious participants in the conspiracy, if there was one, then you ought to acquit them.

INSTRUCTION No. 70.

If you find from the evidence that the acts or any one of them charged by the Government in the indictment, or shown by the evidence, to have been committed by the defendants comprising the subordinate officers and members of the crew of the "Quadra" were committed by said defendant and were so committed and performed by said defendants, solely and simply as employees, servants, or agents of other persons and were performed by said subordinate officers and members of the crew without any common design, purpose or understanding on the part of said subordinate officers and members of the crew with any other persons charged in said indictment, then I instruct you that the said

defendants, subordinate officers and members of the crew of the "Quadra," cannot be considered conspirators and must be acquitted.

INSTRUCTION No. 71.

I charge you that where it is within the power of a party to produce a witness and such a witness is not produced, a presumption arises that the testimony of such witness not produced but available would be adverse to the party failing to produce the witness.

INSTRUCTION No. 72.

If you believe from the evidence in this case that defendant [504] Ford, master of the "Quadra" delivered liquor to other persons with the belief at the time that the delivery by him and that all of his acts and conduct in connection therewith were without intent on his part to violate any law of the United States, and that he was of the belief that his acts and conduct were legal at the time of the performance by him, then I instruct you that as to said defendant Ford, Master of the "Quadra," your verdict shall be "not guilty."

The failure of the Court to give said instructions and each of them by said defendants and each of them was duly excepted to.

DEFENDANT VINCENT QUARTARARO REQUESTED THE COURT TO GIVE HIS INSTRUCTIONS NUMBERED AS HEREINAFTER INDICATED, WHICH WERE SUBMITTED TO THE COURT AND THE GIVING OF WHICH WERE BY THE COURT REFUSED:

INSTRUCTION X.

The Court instructs the Jury that Exhibits 30, 31, 32, 33, 34, 35, 36, 37, which consist of certain dollar bills heretofore allowed in evidence are in no way to be considered in this case, and that the same are to be entirely ignored in arriving at a verdict in this case. You also are instructed to disregard utterly Government's Exhibits 38, 39, 40, 41, 42 and 43, which contain certain exemplars of handwriting.

Furthermore you are instructed to utterly disregard and refrain from the consideration of the testimony of E. O. Heinrich in so far as it touches said or any of said exhibits.

INSTRUCTION A.

You are instructed that if from the evidence you are convinced beyond a reasonable doubt that any one or more of these defendants knew of the existence of the conspiracy charged in the indictment and yet you entertain a reasonable doubt as to whether such defendant or defendants took part in said conspiracy, you must find such defendant or defendants not guilty. [505]

INSTRUCTION B.

You are instructed that the mere fact that certain of these defendants were or may have been acquainted with each other or may have associated together is not in itself sufficient upon which to find a verdict against them or any of them.

INSTRUCTION C.

You are instructed that you cannot convict any of these defendants merely because the evidence in this case may convince (if it should convince) you that the defendants, or some of them are guilty of a conspiracy, other than the one charged in the indictment.

INSTRUCTION E.

The Court instructs the jury, that you are not in this case trying these defendants for the violation of the "National Prohibition Act," nor are you trying them for an infraction of law of the United States known as the "Tariff Act of 1922." You are sworn, to the contrary, to try these defendants solely upon the charge of conspiracy, as alleged in the indictment. And in this connection you are instructed that unless you are convinced beyond any reasonable doubt that the defendants or some of them are guilty of the particular conspiracy to which the indictment refers—you cannot find them guilty even though you may be convinced beyond a reasonable doubt that they are guilty of another or any number of other crimes. [506]

INSTRUCTION F.

You are instructed that even though you believe from the evidence that the conspiracy charged in the indictment existed as therein alleged, and are convinced that some one of the defendants in violation of the National Prohibition Act purchased from some one or more members of such conspiracy and transported the same—certain intoxicating liquor —yet if you entertain a reasonable doubt as to whether such defendant took part in said conspiracy —you must find him not guilty.

INSTRUCTION G.

You are instructed that it is the law by which you are sworn to abide, that if after reviewing all of the facts that have been adduced at this trial you discover that there are two possible interpretations of these facts, the one of which is entirely consistent with the guilt of the defendant and the other of which is consistent with his innocence, it then becomes your bounden duty to lay that interpretation upon the facts which is consistent with the innocence of the defendant, and accordingly find him not guilty.

INSTRUCTION H.

I instruct you that it is the law that a defendant, when accused of crime, has a perfect right to stand mute, and that the law draws no adverse imputation from such conduct.

INSTRUCTION I.

I instruct you that it is the law that the degree of

proof necessary to establish the guilt of the defendant is more or greater than the degree of proof sufficient to acquit him. In the first instance,the Government must prove to a moral certainty and beyond a reasonable doubt that the defendant is guilty of the offense charged, before you can convict him. In the case of the defendant, however, the degree of proof required [507] on his part is merely such as to raise in your minds a reasonable doubt as to his guilt, and in that case it is your duty to acquit him.

INSTRUCTION J.

The Court instructs the jury that the prosecution in this case having offered the testimony of two persons, namely, Sam Crivello and Marina Crivello, who have pleaded guilty to the crime set forth in the indictment, you are to review the testimony of these two persons with caution and to weigh their testimony in the light of the fact that they are here testifying as admitted accomplices. You ought not in other words to give the same degree of credit to the testimony of such witnesses as you would to the testimony of witnesses who are not accomplices and who have not been impeached. I further charge you in this connection, that if you believe after a careful review of their testimony that the accomplices named have wilfully testified falsely to any material fact in this case you may absolutely discard and disregard their testimony.

INSTRUCTION K.

The Court instructs the jury that certain testi-

mony has been offered here by the Government to the effect that one of these defendants, Vincent Quartararo, was present and received from the witness Sam Crivello certain deliveries of illicit liquor at certain times and places. In this connection the said defendant has offered testimony having for its purpose proof that he was not present at the times and places referred to by said witness. In this connection I charge you that if such testimony, or any other evidence which has been here adduced, raises in your mind a reasonable doubt as to whether Vincent Quartararo was present at said times and places it becomes your duty to resolve that doubt favorably to the defendant Vincent Quartararo. [508]

INSTRUCTION L.

You are instructed that it is the duty and sole province of the jury to say whether or not any fact has been proven or not proven and no witness, whether he is an expert witness or not, can decide for you what facts have been here established.

INSTRUCTION M.

You are instructed that all questions concerning the identify of handwriting are to be decided exclusively by the jury. You are not bound to follow the opinion of any expert witness if your opinion runs counter to that of such expert witness. All questions affecting similarity or dissimilarity of handwriting are to be finally decided by you and by no one else.

INSTRUCTION N.

The Court instructs the jury that it is the positive right and privilege of anyone of the defendants here on trial to either take the witness-stand or to refrain from testifying in this case, and as to any defendant who may not have taken the witness-stand, I charge you that the fact that he has not offered himself as a witness is not to be considered by you in any respect in arriving at a verdict in this case. Nor are you to draw any inference adverse to or against any such defendant by reason of the fact that he may not have taken the witness-stand in this case.

INSTRUCTION O.

You are instructed that it is the bounden duty of the prosecution to prove every essential and material fact in this case by more than a preponderance or greater weight of testimony. In a civil case it is only necessary that a fact on either side be established by a mere preponderance or greater weight of evidence, but in a criminal case it is the law that the prosecution must actually prove every material fact to the entire satisfaction of the [509] jury beyond any reasonable doubt. On the other hand, if you find that the defense in this case has offered evidence of any facts having a tendency to disprove facts advanced by the prosecution, or having a tendency to establish the innocence of the defendant, it is not necessary that the defense prove any facts beyond a reasonable doubt. It is only

necessary in any case that the evidence advanced by the defense raise in the mind of the jury or any juror a reasonable doubt and in no case is it necessary that the defendants prove a fact by more than a mere preponderance or greater weight of the testimony.

INSTRUCTION P.

You are further instructed that you cannot convict any of the defendants upon a mere suspicion or upon the mere fact that the probability of their guilt may be greater than the probability of their innocence. The prosecution are bound to establish their guilt beyond all reasonable doubt, and unless they do so you cannot convict them, however strong a suspicion of their guilt you may have in your mind, or however probable their guilt may seem, but it is your duty, under such circumstances to find them not guilty.

INSTRUCTION Q.

You are instructed that the jury in this case are the sole judges of the facts here offered and you alone are the judges of the credibility of the witnesses who may have testified here. It is your privilege and duty under the law in weighing and considering the credibility of such witnesses to observe and note their conduct upon the witness-stand, the manner in which they have testified and deported themselves, whether or not they are persons who entertain any animus or feeling towards or against the defendants and whether or not their testimony is in any

way influenced or colored by any feeling which they may entertain in this case or any interest they may have in the result thereof. [510] If you believe upon hearing the testimony of any of the witnesses that his evidence has been influenced or colored by anything except a desire to testify to the truth, it is your duty to judge of his testimony accordingly and to give it such weight as you deem the testimony of an interested person to be entitled to in this case.

INSTRUCTION R.

The Court instructs the jury that it is the law, by which we are bound in this proceeding, that you and you alone are the judges of the facts in this case, and, that your conscientious conclusions upon the facts together with the law wherever you find it applicable to such facts, must alone guide you in arriving at a verdict.

INSTRUCTION S.

You are instructed that it is for you to say whether any fact has been proven or not proven. And no witness, whether he is an expert witness or not, can decide for you what facts have been here established.

INSTRUCTION T.

You are instructed that the testimony of expert witness is to be received by you with great caution.

INSTRUCTION U.

You are instructed that the mere fact that a defendant may have been in a position where he had

an opportunity to commit the offense which is here charged against him is not sufficient upon which to find a verdict against him.

INSTRUCTION V.

You are instructed that it is your privilege and duty in weighing the testimony of the witnesses to ascertain for yourselves how much credit should be given to statements made by each and every witness and if you find that any witness has [511] wilfully testified falsely as to any one material matter, you may distrust and discard all of the testimony of that witness.

Said defendant Vincent Quartararo duly and regularly excepted to the failure of the Court to give said instructions and each of them. [512]

Thereupon the attorneys for defendants George Ford, George Harris and J. Evelyn presented to the Court a motion for new trial and a motion in arrest of judgment, which said motions were and are in the words and figures following, to wit: [513]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

Before: Hon. JOHN S. PARTRIDGE, Judge.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE FORD et al.,

Defendants.

MOTION FOR NEW TRIAL.

Now come the defendants George Ford, George Harris and J. Evelyn, in the above-entitled action, and jointly and severally move the Court to set aside and vacate the verdict heretofore rendered herein, on the following grounds:

1. That the verdict is against the law.
2. That the said verdict is against the evidence.
3. That the said verdict is not supported by the evidence.
4. That the Court misdirected the jury in matters of law.
5. That the indictment in said action does not state facts sufficient to constitute a public offense as against these moving defendants, or either of them.
6. That the Court erred in denying the motion of these defendants, and each of them, to suppress the evidence made prior to the trial.

7. Errors of law occurring at the trial—in this, to wit: That the Court erred in admitting in evidence, over the objection and exception of the defendants, property, information and writing seized from the steamer "Quadra," said objection being made upon [514] the grounds, among others, that said evidence was in violation of the 4th and 5th Amendments to the Constitution of the United States, and upon the further ground that its use as evidence against these defendants, and each of them, over their objection would be in violation of the 4th and 5th Amendments to the Constitution of the United States. That the Court erred in admitting in evidence testimony as to the speed of the "C–55," and to which ruling defendants duly excepted.

8. That said Court had no jurisdiction of the subject matter of the acts and conduct of these moving defendants, and each of them.

9. That said Court had no jurisdiction of the persons of these defendants, or either of them.

10. That the Court erred in denying the motion of defendants to quash the indictment in the above-entitled action.

Dated: this 3d day of April, 1925.

KENNETH M. GREEN,
H. C. FAULKNER,
Attorneys for Defendants George Ford, George Harris & J. Evelyn. [515]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

Before: Hon. JOHN S. PARTRIDGE, Judge.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE FORD et al.,

Defendants.

MOTION IN ARREST OF JUDGMENT (GEORGE FORD, GEORGE HARRIS AND J. EVELYN).

Now come the defendants George Ford, George Harris and J. Evelyn and move to arrest the judgment on the verdict herein, on the following grounds:

1. That the Court has no jurisdiction of the subject matter of the acts and conduct of these defendants or of the offense claimed against them.

2. That the Court has no jurisdiction of the persons of these moving defendants, or either of them.

3. That the indictment in said action does not state facts sufficient to constitute cause of action or to state a public offense against these moving defendants, or either of them.

4. That the indictment in said action does not show, nor attempt to show, what offense these moving de-

fendants, or either of them, are claimed to have committed, and more particularly in this: That said indictment attempts to allege conspiracy to import liquor into the United States contrary to law, without in any wise indicating the law concerning which the importation is contrary to.

5. That the Court is without power, under the treaty of [516] May, 1924, between the United States and Great Britain, to impose sentence or judgment upon these moving defendants.

6. That the Court is without power to punish the acts and conduct of these moving defendants, or either of them.

7. That all acts, transactions, and conduct of these moving defendants occurred beyond the territorial jurisdiction of the United States.

8. That Sec. 37 of the Criminal Code has no application beyond the territorial limits of the United States.

9. That the Tariff Act of 1922 and the National Prohibition Act have not, nor has either of them, application beyond the territorial limits of the United States.

10. That the conspiracy charged in the indictment never existed within territorial limits of the United States.

11. No overt act set forth in the indictment was proven.

12. No overt act was shown to have been committed pursuant to alleged conspiracy.

13. No conspiracy was shown.

WHEREFORE, defendants, and each of them, pray that judgment be arrested.

Dated: This 3d day of April, 1925.

KENNETH M. GREEN,
H. C. FAULKNER,

Attorneys for Defendants George Ford, George Harris and J. Evelyn. [517]

Said motion for a new trial and said motion in arrest of judgment was duly argued on behalf of said defendants and was thereupon submitted to the Court for its decision, and, after due consideration, the Court denied the motion for new trial and denied the motion in arrest of judgment, to which ruling the attorneys for the defendants then and there duly and regularly excepted. Thereupon the said Court, as punishment for said offense, determined that said defendant George Ford should be imprisoned for two years in the penitentiary and that he pay a fine of One Thousand Dollars; that said defendant George Harris be imprisoned in the penitentiary for a period of thirteen months; and that defendant J. Evelyn be imprisoned for ten months in the county jail.

Thereupon the attorneys for the defendant Charles Horace Belanger presented to the Court, in behalf of said defendant, a motion for a new trial and a motion in arrest of judgment, which said motions were and are in the words and figures following, to wit: [518]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

Before: Hon. JOHN S. PARTRIDGE, Judge.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE FORD et al.,

Defendants.

MOTION FOR NEW TRIAL (CHARLES HORACE BELANGER).

Now comes the defendant Charles Horace Belanger, in the above-entitled action, and moves the Court to set aside and vacate the verdict heretofore rendered herein, on the following grounds:

1. That the verdict is against the law.
2. That the said verdict is against the evidence.
3. That the said verdict is not supported by the evidence.
4. That the Court misdirected the jury in matters of law.
5. That the indictment in said action does not state facts sufficient to constitute a public offense as against this moving defendant.
6. That the Court erred in denying the motion of this defendant to suppress the evidence made prior to the trial.

7. Errors of law occurring at the trial—in this, to wit: That the Court erred in admitting in evidence, over the objection and exception of the defendant, property, information and writing seized from the steamer "Quadra," said objection being made upon the grounds, among others, that said evidence was in violation of [519] the 4th and 5th Amendments to the Constitution of the United States, and upon the further ground that its use as evidence against this defendant over his objection would be in violation of the 4th and 5th Amendments to the Constitution of the United States. That the Court erred in admitting in evidence, over the objection of the defendant, testimony as to the speed of the vessel "C–55," and to which ruling defendant excepted.

8. That said Court had no jurisdiction of the subject matter of the acts and conduct of this moving defendant.

9. That the Court erred in reopening the case of the prosecution after the taking of evidence on behalf of prosecution and defendants and closed.

10. That the Court erred in admitting in evidence the telegram of date June 24, 1924.

11. That the Court erred in denying the motion of defendant to quash the indictment in the above-entitled action.

12. That the Court erred in admitting in evidence certain currency and bills over the objection of defendant.

13. That the Court erred in admitting in evi-

dence transactions of defendant and other witnesses with ships other than the "Quadra."

Dated: this 3d day of April, 1925.

KENNETH M. GREEN,
H. C. FAULKNER,
Attorneys for Defendant Charles Horace Belanger.

[520]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

Before: Hon. JOHN S. PARTRIDGE, Judge.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE FORD et al.,

Defendants.

MOTION IN ARREST OF JUDGMENT (CHARLES HORACE BELANGER).

Now comes the defendant Charles Horace Belanger and moves to arrest the judgment on the verdict herein, on the following grounds:

1. That the Court has no jurisdiction of the subject matter of the acts and conduct of the defendant or of the offense claimed against him.

2. That the indictment in said action does not state facts sufficient to constitute cause of action against this moving defendant.

3. That the indictment in said action does not show, nor attempt to show, what offense this moving defendant is claimed to have committed, and more particularly in this: That said indictment attempts to allege conspiracy to import liquor into the United States contrary to law, without in anywise indicating the law concerning which the importation is contrary to.

4. That the Court is without power, under the treaty between the United States and Great Britain, to impose any punishment upon this moving defendant. [521]

5. That the Court is without power to punish the acts and conduct of this moving defendant.

6. That the conspiracy charged in the indictment never existed within territorial limits of the United States.

7. No overt act set forth in the indictment was proven.

8. No overt act was shown to have been committed pursuant to alleged conspiracy.

9. No conspiracy was shown.

WHEREFORE, defendant prays that judgment be arrested.

Dated: this 3d day of April, 1925.

KENNETH M. GREEN,
H. C. FAULKNER,
Attorneys for Defendant Charles Horace Belanger.

[522]

Said motion for new trial and said motion in arrest of judgment was duly argued on behalf of said defendant and was thereupon submitted to the

Court for its decision, and, after due consideration, the Court denied the motion for new trial and denied the motion in arrest of judgment, to which ruling the attorneys for the defendant then and there duly and regularly excepted. Thereupon the said Court, as punishment for said offense, determined that said defendant, Charles Horace Belanger, be imprisoned in the penitentiary for a term of two years and that he pay a fine in the sum of Ten Thousand Dollars.

Thereupon the attorney for the defendant Vincent Quartararo presented to the Court, in behalf of said defendant, a motion for a new trial and a motion in arrest of judgment, which said motions were and are in the words and figures following, to wit: [523]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

Before: Hon. JOHN S. PARTRIDGE, Judge.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE FORD et al.,

Defendants.

MOTION FOR NEW TRIAL (VINCENT QUARTARARO).

Now comes the defendant Vincent Quartararo, in the above-entitled action, and moves the Court to set aside and vacate the verdict heretofore rendered herein, on the following grounds:

1. That the verdict is against the law.
2. That the said verdict is against the evidence.
3. That the said verdict is not supported by the evidence.
4. That the Court misdirected the jury in matters of law.
5. That the indictment in said action does not state facts sufficient to constitute a public offense as against this moving defendant.
6. That said Court had no jurisdiction of the subject matter of the said offense.
7. That the Court erred in overruling the demurrer of defendant to the indictment, and to which ruling defendant duly excepted.
8. Errors of law occurring at the trial—in this, to wit: That the Court erred in admitting in evidence, over the objection and exception of the defendant, property, information and writing [524] seized from the steamer "Quadra," said objection being made upon the grounds, among others, that said evidence was in violation of the 4th and 5th Amendments to the Constitution of the United States, and upon the further ground that its use as evidence against this defendant, over his objection,

would be in violation of the 4th and 5th Amendments to the Constitution of the United States. That the Court erred in admitting in evidence, over the objection of the defendant, testimony as to the speed of the vessel "C–55," and to which ruling defendant excepted.

9. That the Court erred in reopening the case of the prosecution after the taking of evidence on behalf of prosecution and defendants and closed.

10. That the Court erred in admitting in evidence the telegram of date June 24, 1924.

11. That the Court erred in admitting in evidence certain bank notes and currency bills, over the objection of defendant.

12. That the Court erred in admitting evidence of claimed transactions of defendant and other witnesses with ships other than the "Quadra."

13. That the Court erred in denying the motion of defendant to quash the indictment in the above-entitled action.

Dated: this 3d day of April, 1925.

NATHAN C. COGHLAN,

Attorney for Defendant Vincent Quartararo.

[525]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

Before: Hon. JOHN S. PARTRIDGE, Judge.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE FORD et al.,

Defendants.

MOTION IN ARREST OF JUDGMENT (VINCENT QUARTARARO).

Now comes the defendant Vincent Quartararo and moves to arrest the judgment on the verdict herein, on the following grounds:

1. That the Court has no jurisdiction of the subject matter of the acts and conduct of the defendant or of the offense claimed against him.

2. That the indictment in said action does not state facts sufficient to constitute cause of action or to state a public offense against this moving defendant.

3. That the indictment in said action does not show, nor attempt to show, what offense this moving defendant is claimed to have committed, and more particularly in this: That said indictment attempts to allege conspiracy to import liquor into the United States contrary to law, without in any-

wise indicating the law concerning which the importation is contrary to.

4. That the Court is without power, under the treaty of May, 1924, between the United States and Great Britain, to impose [526] any punishment upon this moving defendant.

5. That the Court is without power to punish the acts and conduct of this moving defendant.

6. That the conspiracy charged in the indictment never existed within territorial limits of the United States.

7. No overt act set forth in the indictment was proven.

8. No overt act was shown to have been committed pursuant to alleged conspiracy.

9. No conspiracy was shown.

WHEREFORE, defendant prays that judgment be arrested.

Dated: this 3d day of April, 1925.

NATHAN C. COGHLAN,

Attorney for Defendant Vincent Quartararo.

[527]

Said motion for new trial and said motion in arrest of judgment was duly argued on behalf of said defendant and was thereupon submitted to the Court for its decision, and, after due consideration, the Court denied the motion for new trial and denied the motion in arrest of judgment, to which ruling the attorney for the defendant then and there duly and regularly excepted. Thereupon the said Court, as punishment for said offense, determined that said defendant, Vincent Quartararo,

be imprisoned in the penitentiary for a term of two years and that he pay a fine in the sum of Ten Thousand Dollars.

The above bill of exceptions contains all of the evidence, oral and documentary, and all of the proceedings relating to the trial, judgment and conviction, and sentence, motion for new trial, and motion in arrest of judgment of the defendants, and each of them.

It is hereby stipulated and agreed by and between the attorneys for the United States and for the defendants that all exhibits introduced in evidence for identification upon the trial of the above-entitled cause, and now in the custody of the clerk of the court, shall be deemed to be included as a part of the foregoing bill of exceptions, with the same effect in all respects as if incorporated in said bill of exceptions. In the event the said exhibits are not so numbered as to identify the same, they shall be marked by the Court, upon its certification of this bill of exceptions, so as to identify the same.

It is further hereby stipulated and agreed that this bill of exceptions be used as the bill of exceptions for the writ of error sued out by the defendants George Ford, George Harris and J. Evelyn, and the writ of error sued out separately [528] on behalf of defendant Charles Horace Belanger, and the writ of error sued out separately on behalf of the defendant Vincent Quartararo, in the above-entitled cause.

Dated: May 10, 1925.

KENNETH M. GREEN,
H. C. FAULKNER,
Attorneys for Defendants George Ford, George Harris and J. Evelyn.

KENNETH M. GREEN,
H. C. FAULKNER,
Attorneys for Defendant Charles Horace Belanger.

NATHAN C. COGHLAN,
Attorney for Defendant Vincent Quartararo.

STERLING CARR,
U. S. Attorney.

THOS. J. RIORDAN,
Assistant U. S. Attorney. [529]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEORGE FORD et al.,
Defendants.

STIPULATION RE BILL OF EXCEPTIONS AND EXHIBITS.

It is hereby STIPULATED and agreed by and between the parties for the United States of America, and the attorneys for the defendants

herein, that all exhibits introduced in evidence upon the trial of the above-entitled case, and in the custody of the clerk of the court, shall be deemed to be included as a part of the foregoing bill of exceptions.

It is further stipulated that in the event that said exhibits are not so numbered as to identify the same, it shall be marked by the Court upon its certification of this bill of exceptions so as to identify the same.

It is further stipulated that all exhibits introduced in the above-entitled action may be marked by the clerk of the above-entitled court and filed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

It is further hereby stipulated and agreed that this bill of exceptions may be used as the bill of exceptions for the writ of error sued out separately by the defendant, Charles H. Belanger, on writ of error sued out separately by the defendant, Vincent Quartararo, and the writ of error sued out separately by the defendants, George Ford, George Harris and J. Evelyn. [530]

Dated: May ——, 1925.

STERLING CARR,
United States Attorney.
THOS. J. RIORDAN,
Assistant United States Attorney, Attorneys for United States of America.

KENNETH M. GREEN,
HAROLD C. FAULKNER,
JAMES B. O'CONNOR,
NATHAN C. COGHLAN,
Attorneys for Said Defendants.

It is hereby stipulated and agreed by and between the attorneys for the United States and the attorneys for the respective defendants, that the proposed bill of exceptions of said defendants on said writ of error, sued out separately by said defendants, and the proposed amendments of the United States to said bill of exceptions, have been correctly engrossed and have been presented in time, and as engrossed may be approved, allowed and settled by the Judge of the above-entitled court as correct in all respects, and that the same shall be made a part of the record in said case and shall be and is a bill of exceptions upon the writs of error sued out separately by the defendants herein.

Dated: May 10, 1925.

STERLING CARR,
United States Attorney.
THOS. J. RIORDAN,
Assistant United States Attorney, Attorneys for Said United States of America.

KENNETH M. GREEN,
HAROLD C. FAULKNER,
JAMES B. O'CONNOR,
NATHAN C. COGHLAN,
Attorneys for Said Defendants. [531]

ORDER APPROVING AND SETTLING BILL OF EXCEPTIONS.

The foregoing bill of exceptions duly proposed and agreed upon by the counsel for the respective parties, is correct in all respects and is hereby ap-

proved, allowed and settled, and made a part of the record herein as per stipulation of the attorneys for the respective parties herein.

Dated: May 11th, 1925.

JOHN S. PARTRIDGE,
United States District Judge.

[Endorsed]: Filed May 11, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [532]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEO. FORD et al.,
Defendants.

PETITION FOR WRIT OF ERROR (GEORGE FORD, J. EVELYN AND GEORGE HARRIS).

Now come Geo. Ford, J. Evelyn and Geo. Harris, some of the defendants in the above-entitled action, through their attorneys, Kenneth M. Green, Esq., and Harold C. Faulkner, Esq., and feeling themselves aggrieved by the judgment of this Court made and entered April 3d, 1925, wherein and

whereby these defendants are sentenced to pay a certain money fine and be imprisoned as set forth in the judgment made and entered by the Court in said cause, to which judgment reference is hereby made for greater particularity, your petitioners say that they are advised by counsel, and therefore that they aver, that there was and is a manifest error in the records and proceedings had in said cause, and in the making, rendition and entry of said judgment and sentence, to the injury and damage of your petitioners, all of which error may be fully made to appear by an examination of the bill of exceptions and the assignment of errors filed herein and presented herewith.

And hereby petition this Honorable Court for an allowance of a writ of error herein to the United States Circuit Court of Appeals, in and for the Ninth Circuit, and that a full and complete transcript of the records and proceedings in said cause, be transmitted by the clerk of [533] this Court to the clerk of the United States Circuit Court of Appeals, in and for the Ninth Circuit; and that, during the pendency of this writ of error, all proceedings had by this Court be sustained, stayed and superseded, and that, during the pendency of said writ of error, the defendants, Geo. Ford, J. Evelyn and Geo. Harris, be admitted to bail in such sum as to this Court seems meet and proper.

Dated: April 10th, 1925.

KENNETH M. GREEN,
HAROLD C. FAULKNER,
Attorneys for Said Defendants.

[Endorsed]: Due service and receipt of a copy of within petition for writ of error is hereby admitted this 10th day of April, 1925.

STERLING CARR,
Attorney for Plaintiff.

Filed Apr. 10, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [534]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEO. FORD et al.,

Defendants.

PETITION FOR WRIT OF ERROR (VINCENT QUARTARARO).

Now comes Vincent Quartararo, one of the defendants in the above-entitled action, through his attorney, Nathan C. Coghlan, Esq., and feeling himself aggrieved by the judgment of this Court made and entered April 3d, 1925, wherein and

whereby this defendant is sentenced to pay a certain money fine and be imprisoned as set forth in the judgment made and entered by the Court in said cause, to which judgment reference is hereby made for greater particularity, your petitioner says that he is advised by counsel, and therefore that he avers, that there was and is manifest error in the records and proceedings had in said cause, and in the making, rendition and entry of said judgment and sentence, to the injury and damage of your petitioner, all of which error may be fully made to appear by an examination of the bill of exceptions and the assignment of errors filed herein and presented herewith.

And hereby petitions this Honorable Court for an allowance of a writ of error herein to the United States Circuit Court of Appeals, in and for the Ninth Circuit, and that a full and complete transcript of the records and proceedings in said cause, be transmitted by the clerk of this court to the clerk of the United States Circuit Court of Appeals, in and for the Ninth Circuit; and that, during the [535] pendency of this writ of error, all proceedings had by this Court be sustained, stayed and superseded, and that, during the pendency of said writ of error, the defendant, Vincent Quartararo, be admitted to bail in such sum as to this Court seems meet and proper.

Dated: April 10th, 1925.

NATHAN C. COGHLAN,

Attorney for Defendant, Vincent Quartararo.

[Endorsed]: Due service and receipt of a copy of the within petition for writ of error is hereby admitted this 10th day of April, 1925.

STERLING CARR,
Attorney for Plaintiff.

Filed Apr. 10, 1925, Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [536]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEO. FORD et al.,
Defendants.

PETITION FOR WRIT OF ERROR (CHARLES H. BELANGER).

Now comes Charles H. Belanger, one of the defendants in the above-entitled action, through his attorneys, Kenneth M. Green, Esq., and Harold C. Faulkner, Esq., and feeling himself aggrieved by the judgment of this Court made and entered April 3d, 1925, wherein and whereby this defendant is sentenced to pay a certain money fine and be imprisoned as set forth in the judgment made and entered by the Court in said cause, to which judgment

reference is hereby made for greater particularity, your petitioner says that he is advised by counsel, and therefore that he avers, that there was and is a manifest error in the records and poceedings had in said cause, and in the making, rendition and entry of said judgment and sentence, to the injury and damage of your petitioner, all of which error may be fully made to appear by an examination of the bill of exceptions and the assignment of errors filed herein and presented herewith.

And hereby petitions this Honorable Court for an allowance of a writ of error herein to the United States Circuit Court of Appeals, in and for the Ninth Circuit, and that a full and complete transcript of the records and proceedings in said cause be transmitted by the clerk of this [537] court to the clerk of the United States Circuit Court of Appeals, in and for the Ninth Circuit; and that, during the pendency of this writ of error, all proceedings had by this Court be sustained, stayed and superseded, and that, during the pendency of said writ of error, the defendant, Charles H. Belanger, be admitted to bail in such sum as to this Court seems meet and proper.

Dated: April 10th, 1925.

KENNETH M. GREEN,
HAROLD C. FAULKNER,
Attorneys for Defendant, Charles H. Belanger.

[Endorsed]: Due service and receipt of a copy of the within petition for writ of error is hereby admitted this 10th day of April, 1925.

STERLING CARR,
Attorney for Plaintiff.

Filed Apr. 10, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [538]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEORGE FORD, GEORGE HARRIS, J. EVELYN, CHARLES HORACE BELANGER and VINCENT QUARTARARO,
Defendants.

ASSIGNMENT OF ERRORS OF DEFENDANTS, GEORGE FORD, GEORGE HARRIS, J. EVELYN, CHARLES HORACE BELANGER and VINCENT QUARTARARO.

Now, come the defendants, George Ford, George Harris, J. Evelyn, Charles Horace Belanger and Vincent Quartararo, jointly and severally, and in connection with their petition for a writ of error herein make the following assignment of errors which they and each of them aver occurred upon the trial of said cause, to wit:

1.

The Court erred in overruling the objection contained on page 6 of the transcript concerning the

jurisdiction of the Court, as more fully appears in said objection, as follows:

Mr. FAULKNER.—On behalf of the members of the crew and the officers of the "Quadra" who are named in indictment 15,914 as the first 23 defendants therein named, and who are named in each succeeding indictment on the calendar this morning, before the jury is empanelled and on behalf of these defendants collectively and individually we object to the jurisdiction of [539] the Court as to the persons of these defendants so that the record will distinctly show that their appearance at this time is not a waiver of protest of jurisdiction. That goes to all the defendants, I take it, without naming them, your Honor.

The COURT.—Yes, and the objection is overruled.

Mr. GREEN.—We note an exception.

2.

The Court erred in refusing the request of defendants to personally interrogate each juror, as more fully appears on page 14 of the transcript, as follows:

Mr. COGHLAN.—At this time, if the Court please, with great deference to the rule of the Court, the defendant Quartararo requests the privilege of personally interrogating each juror. We predicate this general demand upon the fact that of course a defendant at this bar is entitled to a jury of his own selection; we believe that there is a constitutional right involved in that.

The COURT.—Mr. Coghlan, no lesser person

than the Chief Justice of the United States, and the committee of which he is the head, examined that subject and it seems to me their ruling upon it is sufficient.

Mr. COGHLAN.—I have a great deal of respect also for that authority but the request is denied, is it?

The COURT.—Yes, the motion is denied.

Mr. COGHLAN.—We note an exception.

Mr. FAULKNER.—The same request on behalf of the members of the crew and the captain and Mr. Belanger and all of the defendants.

The COURT.—The same ruling.

Mr. FAULKNER.—Exception. [540]

3.

The Court erred in declining the challenge for cause of Juror Morse—the record showing that all peremptory challenges of the defendants at time of empanelment of jury being exhausted—as follows:

Mr. GREEN.—I would like to ask Mr. Morse if it is not a fact that it would require less evidence to satisfy his mind of the guilt of the defendants in a prohibition case than it would in any other kind of a criminal case

The COURT.—Mr. Morse, would it require any less evidence to convince your mind in a case where the prohibition law was involved than in any other kind of a criminal proceeding?

Mr. MORSE.—I think not.

The COURT.—You understand, do you not—all of you Gentlemen—that the Government must establish the guilt of these defendants to a moral

certainty and beyond a reasonable doubt, and if you are so instructed you will all require that kind of evidence, will you? Any other questions?

Mr. GREEN.—I would like to ask Mr. Morse if it is not a fact that he would give more credence to the testimony of officers for the Government than he would to defendants charged with the violation of the National Prohibition Act, or a conspiracy to violate that law, all other things being equal.

The COURT.—Yes, other things being equal.

Mr. MORSE.—Not intentionally.

Mr. GREEN.—Would he do it unintentionally?

Mr. MORSE.—That is a question that I could not answer.

The COURT.—Of course, Mr. Green, that involves a psychological fallacy, if you know what that is. No man could say what he would do unintentionally.

Mr. GREEN.—I understand that Mr. Morse said that he had [541] decided views on the subject of prohibition; then might I ask what those decided views are?

The COURT.—I don't think he said so. Did you, Mr. Morse?

Mr. MORSE.—I said I had very pronounced views.

The COURT.—Well, which is it, for or against?

Mr. MORSE.—For.

The COURT.—In spite of that, is your state of mind such that where a man or men are charged with a conspiracy to violate that law and other laws that you could give them a perfectly fair trial

and require the Government to establish their guilt to a moral certainty and beyond a reasonable doubt before you would convict them?

Mr. MORSE.—I believe I could.

Mr. GREEN.—If the Court please, I interpose a challenge for cause. I do not think that a man who has pronounced views—very pronounced views, as the talisman says, on the subject of prohibition enforcement, in favor of prohibition enforcement, can give the defendants a fair and impartial trial.

The COURT.—The challenge is denied. It is the Government's challenge.

Mr. O'CONNOR.—On behalf of the defendants McKenzie and Pensotti I have some questions to propound.

The COURT.—All right, what are they?

Mr. FAULKNER.—May the record show an exception on behalf of the defendants to your Honor's order denying the challenge?

Mr. COGHLAN.—That is, all the defendants.

The COURT.—Yes, all the defendants.

4.

The Court erred in overruling the objection concerning the jurisdiction as will more fully appear in the grounds of the objection on page 36 of the transcript hereinafter set forth: [542]

Mr. FAULKNER.—If your Honor please, before the introduction of any evidence on behalf of the prosecution, we desire to renew our motion concerning the jurisdiction of the persons and jurisdiction of the subject matter, and particularly point out to the Court that the statutes which these

men are accused of violating have been repealed by the treaty between Great Britain and the United States, and thereby depriving the court of jurisdiction of the subject matter.

The COURT.—The objection is overruled.

Mr. FAULKNER.—Exception.

5.

The Court erred in admitting in evidence certain testimony over the objection of the defendants as will more fully apear, as follows:

Mr. GILLIS.—Q. Did you look on board the "C–55"? A. Yes.

Q. What did you see on board the "C–55"?

Mr. FAULKNER.—We object to the question on the ground it is an effort on the part of the prosecution to prove an overt act prior to the establishment of the conspiracy; that is an objection which goes to the benefit of all officers and members of the crew, and is supplemented by an objection on behalf of Mr. Belanger to the effect that it is not binding upon him, hearsay, and the proper foundation has not been laid.

The COURT.—There are two answers to that. In the first place, that is within the discretion of the Court, and in the second place the overt act may be received as evidence of the conspiracy, itself. The objection is overruled.

Mr. FAULKNER.—Exception.

Mr. COGHLAN.—And the same objection as to Quartararo, and exception? [543]

The COURT.—Yes.

(Last question repeated by the reporter.)

A. A number of sacks, filled, with the word "Corby" painted on them, and a partly filled case of bottles.

6.

The Court erred in admitting in evidence certain testimony over the objection of the defendants as will more fully appear as follows:

Mr. GILLIS.—Q. Did you see the bottles?

A. Yes.

Q. Did you see what kind of bottles they were?

Mr. FAULKNER.—We object to that on the grounds heretofore stated in behalf of the officers, and members of the crew, and Mr. Belanger, as to the question propounded by the District Attorney.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

Mr. COGHLAN.—The same objection on behalf of the defendant Quartararo.

The COURT.—The same ruling.

Mr. COGHLAN.—Exception.

(The last question was repeated by the reporter.)

Mr. GILLIS.—Q. Just the appearance of them, captain?

A. They were, I would say, beer bottles.

7.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. GILLIS.—Q. Captain, now, before having any conversation with reference to the "Quadra," or her cargo, or anything that pertained to that, or pertained to your position aboard the [544]

"Shawnee," or that pertained to the crew in any manner, or any defendant in this case, did you make any promises to Captain Ford, or did you make any threats to him, or use any coercion to get him to make a statement to you of any kind, shape or form?

A. I did not.

Q. Now, did you have a conversation with Captain Ford at that time? A. I did.

Mr. FAULKNER.—I renew on the objection on behalf of the defendant Belanger that it is immaterial, irrelevant and incompetent, the proper foundation has not been laid as to him, and renew the motion on behalf of Captain Ford and the members of the crew that this is a conversation alleged to have occurred beyond the jurisdiction of the United States.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

8.

The Court erred in admitting further evidence concerning conversations between Captain Howell and Captain Ford over the objection of counsel for the defendants; to the ruling of the Court the defendants duly excepted.

9.

The Court erred in admitting in evidence that certain chart marked Government's Exhibit No. 1, the record concerning which is as follows:

Mr. GILLIS.—Q. And that is the only chart that you used? A. Yes.

Mr. GILLIS.—I ask that the chart be introduced

in evidence and marked Government's Exhibit No. 1.

Mr. CROWLEY.—The same objection that we have heretofore made, your Honor.

The COURT.—Objection overruled. [545]

Mr. CROWLEY.—Exception.

Mr. FAULKNER.—The same objection.

(The document was here marked U. S. Exhibit 1.)

10.

The Court erred in admitting the evidence concerning the bearings of the "Quadra," the record concerning which is as follows:

Mr. GILLIS.—Q. What was the result of those bearings?

Mr. CROWLEY.—The same objection that we have heretofore made, and by that I mean that lengthy objection I stated in the record.

The COURT.—Objection overruled.

Mr. CROWLEY.—Exception.

Mr. FAULKNER.—The same objection and exception.

Mr. COGHLAN.—The same objection on behalf of the defendant Quartararo.

The COURT.—Overruled.

Mr. COGHLAN.—Exception.

A. The bearings placed the vessel 5.7 miles from the most northern of the North Farallone Islands.

11.

The Court erred in admitting further evidence concerning the position of the "Quadra" at the time of seizure, as will more fully appear in the record,

and to the receipt of which evidence the defendants duly objected and to the ruling of the Court duly excepted.

12.

The Court erred in limiting the cross-examination of Captain Howell concerning his competency as a navigator, as will more fully appear as follows:

Mr. GREEN.—Q. Have you ever been court-martialed? [546] A. Yes.

Q. How many times? A. Three.

Mr. GILLIS.—Just a moment, may it please the Court. I don't know what the object of this is.

The COURT.—No. It is manifestly improper, Mr. Green.

Mr. GREEN.—Well, your Honor, the competency of the officer—and of the witness—is certainly in issue.

The COURT.—Not at all. The statute provides the one question you can ask along that line.

Mr. GILLIS.—Mr. Green knew that before he ever asked the question.

Mr. GREEN.—The witness has said—

The COURT.—I don't want any discussion on it, Mr. Green; the objection is sustained.

Mr. GREEN.—I except to the Court's ruling.

Q. Do you remember, on the 14th of May, at about 7:30 o'clock P. M. ramming into the Red Stack tug "Sea Lion" and "Sea Fox"—

Mr. GILLIS.—Just a moment. To which I object as not proper cross-examination, and Mr. Green knows it is not proper cross-examination.

Mr. GREEN.—No, I don't.

The COURT.—Objection sustained.

Mr. GREEN.—Exception.

The COURT.—Don't ask any more questions like that, Mr. Green.

13.

The Court erred in admitting in evidence certain testimony over the objection of the defendants as will more fully appear as follows:

Mr. GILLIS.—Q. And as you approached the "Quadra" was any signal given to the "Quadra" by the "Shawnee"?

Mr. FAULKNER.—I object to that as immaterial, irrelevant [547] and incompetent, and not binding upon any defendant officers and the members of the crew of the "Quadra," and another attempt to prove an overt act prior to the establishment of the conspiracy.

The COURT.—Overruled.

Mr. FAULKNER.—Hearsay, and the proper foundation has not been laid.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

Mr. GILLIS.—Answer the question.

A. At that time a signal was given to the "Quadra" to hove to, when we were within, say, about a mile of her.

14.

The Court erred in admitting further evidence of the witness Wellington S. Morse concerning the position and the seizure of the "Quadra" and the "C-55," to which evidence defendants duly objected and which objections were by the Court over-

ruled and to which ruling defendants duly excepted, as will more fully appear in the bill of exceptions.

15.

The Court erred in admitting in evidence certain testimony over the objection of the defendants as will more fully appear as follows:

Mr. GILLIS.—Q. What did it read at that time?

A. 44 fathoms.

Mr. FAULKNER.—Just a moment. I ask that the answer be stricken out in order that the defendants may object to that as immaterial, irrelevant and incompetent, and the proper foundation is not laid, and not binding upon any of the defendants in this case, and an act occurring beyond the territorial jurisdiction of the United States. [548]

The COURT.—Let the record show that the objection was made before the answer, and the objection is overruled.

Mr. FAULKNER.—Exception.

16.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. GILLIS.—Q. Did you make a test of the speed of the "C-55"? A. Yes.

Q. What was her average speed?

A. 6.6 knots per hour.

Mr. FAULKNER.—We ask that that go out for the purpose of objection.

The COURT.—Let it go out.

Mr. FAULKNER.—We object to that as immaterial, irrelevant and incompetent, not within the

issues of the case, too remote, too general, the speed of the "C-55" to-day is not necessarily the speed of the "C-55" as of October 12, or any other time, not binding upon any of the defendants, individually or collectively.

The COURT.—I suppose the question, Mr. Gillis, is directed to the provisions of the treaty between the United States and Great Britain?

Mr. GILLIS.—Yes, your Honor; I am simply covering all points. Personally, I take the view it is not necessary to do it, but I appreciate the fact that there may be a record go on appeal, and I simply wish to put in all of the evidence that is necessary to cover all points.

The COURT.—Any other objection?

Mr. CROWLEY.—Yes, may we have an objection to this testimony, the same objection as we made when Captain Howell was on the stand, and made at length? [549]

The COURT.—Yes.

Mr. CROWLEY.—And exception.

Mr. FAULKNER.—May I indicate this to your Honor in connection with the reason that prompts the offer of this evidence, it is incumbent upon the proper foundation being laid to show that this speed is the speed at the time the ship was alongside of the "Quadra"; no other speed is controlling upon the Court, or gives them jurisdiction under the treaty for the seizure of either the "C-55" or the "Quadra." Now, Mr. Gillis has announced his purpose, and, therefore, if he sticks to the pur-

pose for which he offers the evidence, he must confine himself to legal evidence under that treaty.

The COURT.—Of course, you are familiar with the provision of the statute with regard to presumptions, and one of them is the condition that exists is presumed to have always existed; if there was any change in the speed of the boat from the 12th of October to the time the test was made, of course it would be a proper matter to be shown.

Mr. FAULKNER.—This question has been passed upon in a similar case to this, in which the District Court of Connecticut held the speed of a revenue cutter loaded and empty is not controlling upon the speed of a revenue cutter laden with liquor.

The COURT.—What does the treaty between the United States and Great Britain say?

Mr. FAULKNER.—The treaty between the United States and Great Britain is in this language: I will read the article under which, of necessity, Mr. Gillis' evidence must come in: "The rights conferred by this article shall not be exercised at a great distance from the coast of the United States, its territories or possessions, than can be traversed in one hour by the vessel suspected of endeavoring to commit the offense. [550] In cases, however, in which the lipuor is intended to be conveyed to the United States, its territories or possessions, by a vessel other than the one boarded and searched, it shall be the speed of such other vessel, and not the speed of the vessel boarded, which shall determine the distance from the coast at which the right under this article can be exercised." Now, in pass-

ing upon the speed of a vessel other than the vessel which is seized, the District Court of Connecticut has determined that the speed, under the circumstances, in regard to sea, wind and tide, the speed under the circumstances under which the vessel is laden, is the only speed to determine the right of the seizure of the other vessel.

The COURT.—At the very time of the seizure?

Mr. FAULKNER.—At the very time of the seizure.

The COURT.—I do not agree with that, at all. The objection is overruled.

Mr. FAULKNER.—Exception.

Mr. GREEN.—I would like to make the further objection that no proper foundation has been laid in this, in that it has not been shown that any liquor was intended to be conveyed to the United States by the "C-55."

The COURT.—Of course, Mr. Green, that is, again, a question of the order of proof, and, of course, if it be not shown that the vessel was engaged in the business of conveying liquor, there may be something to that. You can renew that objection at the proper time. For the present it is overruled.

Mr. GREEN.—Exception.

Mr. O'CONNOR.—That objection, if your Honor please, applies to all the defendants.

The COURT.—Yes.

Mr. O'CONNOR.—And exception. [551]

Mr. GILLIS.—Q. Now, you may answer the

question, Mr. Anderson, the average speed of the "C-55." A. 6.6 knots per hour.

17.

The Court erred in admitting in evidence that certain book marked on the trial of said cause U. S. Exhibit No. 6, as will more fully appear in the following excerpt from the record:

Mr. GILLIS.—Q. Where did you find that book, Mr. Creighton?

A. On the shelf in the supercargo's cabinet.

Q. Of the "Quadra"?

A. On board the "Quadra."

Q. At that time? A. On October 15.

Mr. GILLIS.—I ask that the book be introduced in evidence and marked U. S. exhibit next in order.

Mr. FAULKNER.—If the Court please, we object to that on the ground that the book is immaterial, irrelevant and incompetent, hearsay, no proper foundation laid, not within the issues of the case, and another attempt to prove an overt act before the establishment of a conspiracy, not binding on the defendants jointly or severally; and upon the further ground, if the Court please, that the offer of this book in evidence is in violation of the rights of the defendants, each of them, jointly and severally, under the Fourth and Fifth Amendments to the Constitution; and particularly on all of the grounds urged at the time of the urging of the motion to suppress and exclude evidence. And as to all of the defendants other than the officers and members of the crew, we particularly urge the point that no proper foundation has been laid as

to them and it is not binding as to them. As to the officers and members of the crew, we urge all of the points urged in the motion to exclude evidence, and particularly that it is in violation of their rights under the Fourth and Fifth Amendments to the Constitution of the United States. Your Honor [552] will have in mind that if that is a book in the handwriting of any person not a defendant in this case it cannot under any theory of the case be admissible in evidence.

The COURT.—It seems to be a partial log of the "Quadra" running from September 10 to October 7. Objection overruled.

Mr. CROWLEY.—May I enter the objection, if your Honor please, that it is self-serving; that there was and is no evidence showing or tending to show, *prima facie* or at all, the existence of a conspiracy alleged, or of any conspiracy. And there is no evidence at all showing or tending to show that he or any of the defendants was or is connected therewith. There is no evidence furthermore, your Honor, showing any personal responsibility or familiarity of any of the defendants with the book now proposed to be offered in evidence.

Mr. FAULKNER.—And I may add to that, the Court indicating before passing on the motion that it purported to be a log, the record in the handwriting of the persons who identified the book shows that it was hidden away on a shelf on the "Quadra" and undoubtedly could not have served the purpose of a log on the "Quadra" or any official instrument of any sort.

The COURT.—It is not a regular log. It is admissible. Objection overruled.

Mr. FAULKNER.—Exception.

Mr. CROWLEY.—We note an exception, your Honor.

(The book was here marked U. S. Exhibit No. 6.)

18.

The Court erred in denying the motion of the attorney for the defendants to strike out the parts of a book read into evidence, as will more fully appear as follows:

Mr. FAULKNER.—We move that everything in the book read by Mr. Gillis be stricken out and the jury instructed to disregard [553] it on all the grounds stated, and upon the further ground that the reading of the record shows that it is not an official log of the steamer "Quadra"; the last look shows that it is nothing more or less, giving it its best impression, than a copy of another instrument, and that other instrument would be the best evidence of that which is contained in this.

The COURT.—You mean so far as applies to the cargo? That that would necessarily be a copy of the ship's manifest?

Mr. FAULKNER.—Yes, your Honor.

The COURT.—That may be true, but it was found in the room of one the defendants here, the supercargo. The motion is denied.

Mr. FAULKNER.—As to the entire part, your Honor, or is it granted as to the copy of the list read?

The COURT.—Yes, I think I will grant it because the manifest would be the best evidence.

Mr. GILLIS.—Your Honor, would not that go to the weight of the evidence and the value of it rather than to what is contained here?

The COURT.—No, I think not. The copy of a ship's manifest made by defendant who is not on trial it seems to me would not be admissible. A statement made by him in regard to what was done, if it was during the progress of the conspiracy, is, of course, admissible against all. A mere copy of the document which showed the cargo of the ship would not be admissible. That part of it which purports to contain the cargo will be stricken out. As to the rest of it, the motion is denied.

Mr. FAULKNER.—Excepion.

Mr. GREEN.—Your Honor, I would like to add a further ground to the motion to strike out this evidence. It is apparent from the reading of the book that everything that is set forth therein [554] happened outside of the territorial waters of the United States.

The COURT.—You would not contend would you, Mr. Green, that if a man were here properly charged with crime that a statement made by him in London would not be considered admissible against him?

Mr. GREEN.—Well, that is all right for what it is worth.

The COURT.—It is for the jury to tell what it is worth. Motion denied.

Mr. GREEN.—I think, your Honor, that is a question of law.

The COURT.—I deny the motion.

Mr. GREEN.—Exception.

19.

The Court erred in admitting in evidence certain pictures marked U. S. Exhibits 8 to 15 inclusive, as will more fully appear, as follows:

Mr. GILLIS.—Q. And was there any change in the cargo of the ship from the time it was brought in by Captain Howell until these pictures were taken?

A. The cargo of the ship was in the condition in which it was brought in.

Mr. GILLIS.—I ask that these pictures be introduced in evidence and marked Government's exhibit next in order.

Mr. CROWLEY.—The same general objection that we have had running throughout the trial.

Mr. FAULKNER.—The same objection on behalf of all of the defendants, jointly and severally.

Mr. GREEN.—Particularly the objection on behalf of the officers and the captain and the crew of the "Quadra" on all of the grounds stated in the motion to exclude evidence.

Mr. FAULKNER.—I might indicate further that the pictures taken show that they do not conform to the foundation laid by Mr. Creighton and do not represent the condition of the cargo at the time of seizure. [555]

The COURT.—They show what was in the boat. Overruled.

Mr. FAULKNER.—Exception.

20.

The Court erred in admitting in evidence cer-

tain slips of paper marked U. S. Exhibit No. 16 over the objection of the attorneys for the defendants, as will more fully appear as follows:

Mr. GILLIS.—Q. These are the ones I want. These six slips of paper which you have just handed me were found where?

A. In the captain's room on the "Quadra."

Q. On October 15? A. On October 15.

Mr. GILLIS.—I offer these six slips of paper in evidence, may it please the Court, and ask that it be marked Government's exhibit next in order.

Mr. CROWLEY.—The same objection.

Mr. FAULKNER.—The same objection on behalf of the defendants jointly and severally, and the further objection that the pictures were found three days postdating the seizure and the arrest of the defendants, and during a period of time on which the vessel was in the control of people other than the defendants; the proper foundation has not been laid.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

21.

The Court erred in denying the motion of the attorneys for the defendants to strike out contents of said slips of paper, as will more fully appear as follows:

Mr. GREEN.—I move to strike out the exhibit just offered by the Government on all of the grounds urged in the motion to exclude evidence heretofore made, and on the further ground that it is apparent from the reading of this exhibit that

they are [556] not evidence of any violation of any law of the United States; a transfer of liquor on the high seas; and there is no showing to the contrary, from one foreign vessel to another vessel, it is certainly not a violation of any law of the United States.

The COURT.—No, not of itself, but I cannot anticipate what the evidence will be; of course, if there is no evidence here that this vessel was lying out there for the purpose of landing liquor on our shore, that would be true; but this is only one step of the evidence, and it may develop that there was some landing. I deny the motion.

Mr. GREEN.—Exception.

22.

The Court erred in admitting in evidence that certain book marked U. S. Exhibit No. 17, as will more fully appear as follows:

Mr. GILLIS.—Q. Do you know what part of the "Quadra" it came from?

A. From the officers' quarters.

Q. From the officers' quarters? A. Yes.

Mr. GILLIS.—I ask that it be introduced in evidence and marked Government's exhibit next in order.

Mr. FAULKNER.—The same objection to it that was made to the introduction of similar exhibits taken from the "Quadra," and on the further ground that the instrument in question was illegally seized from the possession of the defendants, officers and members of the crew of the "Quadra" at a point beyond the territorial jurisdiction.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

(The book was marked U. S. Exhibit No. 17.)

23.

The Court erred in admitting in evidence the agreement of [557] articles and account of crew, over the objection of the defendants, as will more fully appear as follows:

Mr. GREEN.—I object to it on behalf of the captain and officers and crew of the "Quadra," particularly on all of the grounds stated heretofore in the motion to exclude evidence on file here.

The COURT.—It is a form of ship's articles prescribed by the statute of the Dominion. Overruled.

Mr. GREEN.—Exception.

24.

The Court erred in denying the motion of the attorneys for the defendants to strike out the answer to the question propounded by the prosecution to their witness John Toland on direct examination, as follows:

Mr. GILLIS.—Q. Just relate the manner in which the cargo was unloaded from these boats and taken to the customs-house?

Mr. GREEN.—I object to that as immaterial, irrelevant and incompetent, and as hearsay.

The COURT.—Objection overruled.

Mr. GREEN.—Exception.

A. It was unloaded by inspectors at the waterfront and hauled to the appraisers stores by the overland Freight & Transfer Company.

Mr. FAULKNER.—I move that the answer be striken out as clearly hearsay.

The COURT.—Motion denied.

Mr. FAULKNER.—Exception.

A. (Continuing.) Each load was accompanied to the appraisers stores by a customs officer and delivered to me. [558]

25.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. GILLIS.—Q. Where was this sack taken from, that is, what boat did this sack come from?

Mr. FAULKNER.—We object to that on all the grounds heretofore stated, and particularly on behalf of the officers and members of the crew on the ground that it is in violation of their rights under the Fourth and Fifth Amendments to the Constitution, and that the seizure of the "Quadra" occurred beyond the territorial jurisdiction of the United States.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

A. "C-55."

26.

The Court erred in admitting in evidence, over the objection of the defendants, certain quantities of liquor marked U. S. Exhibit No. 20, as will more fully appear, as follows:

Mr. FAULKNER.—We renew our objection on the ground that the proper foundation has not

been laid; there is nothing in the record to show that this liquor was taken from the "Quadra."

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception. And the general objection on behalf of the officers and members of the crew is also urged.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

The COURT.—You gentlemen do not need so many objections. One objection to a given line of evidence, if well taken, is as good as a thousand. As Judge Rudkin has remarked frequently in the Court of Appeals, one good objection is as good as a thousand. [559] Why repeat it every time a matter is referred to?

Mr. FAULKNER.—The reason is, may it please the Court, that the authorities of the Circuit Court are not uniform that every right is protected.

The COURT.—Of course, if it is a different kind of evidence it would be a different proposition. You do not need an exception for every bottle of whiskey or bottle of gin that it offered.

Mr. FAULKNER.—That is my own feeling, your Honor, but it is not always the feeling of the Circuit Court of Appeals.

The COURT.—I think it is perfectly safe to rely upon it. Of course, gentlemen, if you would rather encumber the record with all these objections, it is your privilege so to do.

Mr. FAULKNER.—There in line with the Court's remarks, we will follow your Honor's suggestions.

The COURT.—Yes. I think you are thoroughly protected. If you have an objection and an exception to one of these parcels it certainly is as good as if you had an objection and exception to each and every one of them.

Mr. HENNESSY.—If the Court please, I understood that a stipulation was entered into yesterday that one objection taken by counsel for any of the defendants covered all the others.

The COURT.—Yes, it was, Mr. Hennessy. That was understood with Mr. Gillis.

Mr. HENNESSY.—I desire that the defendants Neilsen and Allen be given the benefit of the objections taken by the other counsel.

The COURT.—Yes, I think that was understood by Mr. Gillis, that any objection made by one goes to the benefit of all.

Mr. GREEN.—Without waiving any of the grounds of objection I will stipulate on behalf of the defendants whom I represent that the exhibit now offered by Mr. Gillis contains in excess of one-half on one per cent of alcohol by volume and that it is fit [560] for beverage purposes.

The COURT.—Then it may be admitted in evidence. (U. S. Exhibit No. 20.)

27.

The Court erred in permitting the introduction into evidence of further quantities of liquor claimed to have been seized from the "Quadra," to which objection was regularly made by the defendants through their counsel, and by the Court overruled, and to which ruling the defendants

then and there duly excepted as will more fully appear in the bill of exceptions.

28.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. GILLIS.—Q. And put alongside of her?

A. Yes.

Q. State what happened after you pulled alongside of her?

Mr. CROWLEY.—Just a minute. The same objection that we have been making all along, your Honor.

The COURT.—Objection overruled.

Mr. CROWLEY.—Exception.

Mr. FAULKNER.—That is on behalf of all of the defendants?

The COURT.—Yes.

A. I went alongside and I turned my searchlight in on her; it was dark. I searched her and at the forward hatch were some barrels of alcohol.

29.

The Court erred in admitting in evidence the barrel, seizure No. 27,643, and which was marked U. S. Exhibit No. 23, as will more fully appear as follows:

Mr. HENNESSY.—Q. You never saw it on the "903-B"? [561] A. No, sir.

Q. When was it that you received it as the appraisers' storeroom?

A. I think it was the 13th of October.

Q. Of your own knowledge, you don't know where the barrel came from? A. No.

Q. Just what was told you?

A. Except from the ticket that came with it.

Mr. HENNESSY.—We object to the testimony of this witness, Judge, on the ground that it is hearsay, and we move to strike it out.

The COURT.—The "903–B" was the one that Mr. Sortes testified to?

Mr. GILLIS.—Yes, your Honor.

The COURT.—The objection is overruled.

Mr. HENNESSY.—Exception. I desire to object to it on the ground that it is immaterial, irrelevant and incompetent, it has not been identified as coming from the "903–B"; and, furthermore, it was seized as the result of an illegal and unreasonable search and seizure.

The COURT.—Objection overruled.

Mr. HENNESSY.—Exception.

Mr. FAULKNER.—We supplement that objection upon the ground that it is not binding on the officers and members of the crew, because there is no showing in the record that it was transferred—even giving it the worst construction—at a point where the transfer was legal. Also the general objections heretofore made.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

30.

The Court erred in admitting in evidence other quantities of liquor claimed to have been seized on the "903–B," to which [562] objection was

duly made by the defendants and overruled by the Court, and to which ruling the defendants by their counsel then and there duly excepted, as will more fully appear in the bill of exceptions.

31.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. GILLIS.—Q. Did you know a Mr. J. Lloyd in September of 1924? A. I met him, yes.

Q. Did you make any sale to him of burlap bags?

Mr. FAULKNER.—Objected to on the ground, if your Honor please, that it is immaterial, irrelevant and incompetent, and not binding upon any of the other defendants, and not within the issues of the case, and the proper foundation has not been laid for its introduction in evidence.

The COURT.—Is Mr. Lloyd a defendant?

Mr. GILLIS.—Mr. Lloyd is a defendant.

Mr. O'CONNOR.—He is not on trial.

Mr. GILLIS.—He is not on trial, but he is a defendant in this action.

The COURT.—I presume that you intend to connect this up.

Mr. GILLIS.—I do.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

32.

The Court erred in admitting in evidence that certain order marked U. S. Exhibit No. 25 as will more fully appear as follows:

Mr. GILLIS.—Q. Who gave you the order?

A. Mr. Lloyd.

Q. And the order is for what?

A. 15,000 burlap bags. [563]

Q. Does it show on there the size of the bags?

A. Yes.

Q. What size are they?

A. 12,000 19½ to 27½, 3000 17½ to 31.

Mr. GREEN.—Objected to, if your Honor please, as not being in the handwriting of the defendant charged, there is no proper identification of the person this order was sold to, as being one of the defendants in this case; the sale is really to the Lloyd Pacific Co., which has not been identified as being connected with any defendant in this case.

The COURT.—I presume that it will be connected up. Of course, if it is not, it will by no possibility do anybody any harm. Overruled.

Mr. GREEN.—Exception.

Mr. FAULKNER.—If the Court please, the instrument does not even purport to have been sold to a defendant in this case.

The COURT.—But the witness testified what he did; he sold it to Win. Lloyd.

Mr. FAULKNER.—If that is a fact, then this instrument is of no value.

The COURT.—What is it, Lloyd Pacific Co.?

Mr. GILLIS.—It is Lloyd Pacific Co.

The COURT.—Is this a regular bill shipped in the regular course of business for that sale to Lloyd? A. Absolutely, yes.

The COURT.—It will be admitted.

Mr. CROWLEY.—Exception.

Mr. FAULKNER.—Exception.

(Marked U. S. Exhibit 25.) [564]

33.

The Court erred in admitting in evidence over the objection of the defendants that certain book marked U. S. Exhibit No. 26, as will more fully appear as follows:

Mr. GILLIS.—Q. Tell us what it is.

A. The delivery tag from the shipping department.

Q. For what?

A. For 30 bales of bags, 500 to a bale.

Mr. GILLIS.—I ask that that be introduced and marked Government's exhibit next in order.

Mr. CROWLEY.—Same objection.

The COURT.—That covers the bags included in this order? A. Yes.

Mr. GILLIS.—The same order number appears in each one?

A. I did not look at that, Mr. Gillis. I think it does.

Mr. FAULKNER.—The same objection, with the further objection that it shows it was not received by the party to whom the claim is made that the instrument was sold, and it could only be binding on the person whose name is subscribed to it, the one into whose possession they came.

The COURT.—Who is he?

Mr. GILLIS.—J. S. and some name beginning with "B."

Mr. FAULKNER.—Who he represents is not indicated there.

The COURT.—Q. At any rate, these were the bags which were sold to Mr. Lloyd, were they?

A. Yes.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

Mr. CROWLEY.—Exception.

(The book was here marked U. S. Exhibit No. 26.) [565]

34.

The Court erred in admitting in evidence certain testimony over the objection of the defendant as will more fully appear as follows:

Mr. GILLIS.—Q. Did you receive any communication with reference to order No. 2730, shown here on Government's Exhibit 26 on September 25, 1924? A. Yes, I did.

Q. What were those instructions that you received?

Mr. FAULKNER.—I object to that on the ground it is immaterial, irrelevant and incompetent, not binding on any of the defendants, and a trasaction had or intended to be had with some person not before the Court, and not binding upon any defendant in this case, and the proper foundation has not been laid.

The COURT.—The objection is overruled.

Mr. FAULKNER.—Exception.

A. To deliver 15,000 bags that we had on hand between Pier 18 and 20, and have the teamster see Captain Sam.

35.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows

Mr. GILLIS.—Q. 30 bales? A. Yes.

Q. Where did you takes those 30 bales?

Mr. FAULKNER.—The same objection, if your Honor please.

The COURT.—The same ruling.

Mr. FAULKNER.—Exception.

A. To Pier 22.

Mr. GILLIS.—Who did you deliver them to there?

A. This gentleman that signed the receipt.

Q. What motor-boat did they go to?

A. They went on the "Californian." [566]

Mr. FAULKNER.—We object to that on the ground it is hearsay.

Mr. GILLIS.—Not at all.

The COURT.—Q. Do you know, Mr. Stewart —were they taken there from you by a motor boat? A. The boat was there.

Q. The boat was there? A. Yes.

Q. Did the person who signed this come from the motor boat? A. Yes, he was on the boat.

The COURT.—The objection is overruled.

Mr. FAULKNER.—Exception.

36.

The Court erred in admitting in evidence over the objection of the defendants Government's Exhibit 27 for Identification, as will appear more fully, as follows:

Mr. GILLIS.—Q. I show you Government's Exhibit No. 27 for Identification, a tag attached to a sheet of paper, and I ask you to examine it; have you ever seen that before? A. Yes, sir.

Q. Where did you get that tag?

A. I took it off a bale of sacks I found in the forward hold of the steamer "Quadra."

Mr. GILLIS.—I now offer, ask that Government's Exhibit No. 27 for Identification be introduced in evidence.

Mr. FAULKNER.—We object to the introduction of the tag in evidence, if the Court please, as to the officers and members of the crew of the "Quadra" on the ground that it is the result of an illegal seizure. The point of the objection is more fully covered by the motion to exclude evidence heretofore presented to your Honor. On behalf of the remaining defendants it is objected to on the ground that it is immaterial, irrelevant and incompetent and hearsay and the proper foundation has not been laid, and also as self-serving. [567]

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

(U. S. Exhibit No. 27.)

37.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. RIORDAN.—Q. Did you see any of the liquor labeled on the "Quadra" of the same type and kind that you have just designated?

Mr. HENNESSY.—I object to that on the ground it is immaterial, irrelevant and incompetent.

The COURT.—Objection overruled.

Mr. HENNESSY.—Exception.

A. I identified absolutely the same ten-gallon kegs—marks, type, stencils, everything in appearance.

38.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. RIORDAN.—Q. Have you ever visited the steamer "Quadra"? A. I have.

Mr. FAULKNER.—We object to that as to all defendants other than those men contained on the "Quadra" as immaterial, irrelevant and incompetent, and hearsay.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

Mr. RIORDAN.—Q. How did you go to the "Quadra," by what means?

A. A power-boat.

Mr. FAULKNER.—The same objection.

The COURT.—The same ruling. [568]

Mr. FAULKNER.—Exception.

39.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. RIORDAN.—Q. Now, were you going to the "Quadra" for any particular purpose?

Mr. FAULKNER.—The same objection.

The COURT.—The same ruling.

Mr. FAULKNER.—And, further, it is not within the issues of this case, that it is not a boat claimed in the indictment to have been used for the purpose of consummating any conspiracy charged.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

40.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. RIORDAN.—Q. Have you made arrangements with anybody—answer that "Yes" or "No"—had you made arrangements with anybody for a cargo of liquor?

Mr. FAULKNER.—The same objection.

The COURT.—The same ruling.

Mr. FAULKNER.—Exception.

41.

The Court erred in denying the motion of the attorneys for the defendants to strike out the answer to the question propounded by the prosecution to their witness Magruder on direct examination, as follows:

Mr. RIORDAN.—Q. Had you had any prior arrangement about [569] landing liquor from boats similar to the "Quadra" prior to this mission?

Mr. FAULKNER.—The same objection, and the further objection that it is immaterial, irrelevant and incompetent if this man landed liquor from any number of boats other than the "Quadra."

Mr. RIORDAN.—I think I can show his connection, if I am given an opportunity.

Mr. GILLIS.—I do not understand that we are confined in this conspiracy to the "Quadra," alone.

Mr. FAULKNER.—Read the indictment.

Mr. GILLIS.—That is simply one of the overt acts.

Mr. FAULKNER.—There is no other overt act alleged in the indictment, except overt acts founded on transactions with the "Quadra."

The COURT.—Basing the ruling on various decisions of the United States Courts of Appeal throughout the country, I held in the case of this very man Terry, whose name is exceedingly familiar to me, and I think he was out on bail from a conviction in this Court—I held in his very case that it was competent on a charge of conspiracy to land liquor to show other instances as bearing upon the general scheme or purpose. I founded that ruling upon a decision of the House of Lords, upon several decisions of the courts of appeal of the various circuits, and a decision of the Supreme Court of California, People vs. Gray, and the reasoning of Prof. Wigmore in his chapter upon the subject, and, curiously enough, the reasoning adopted by the House of Lords, the courts of appeal, and the Supreme Court of California was identically the same, although, in no one of the cases, did they refer to or seemingly have knowledge of the others. It seems to me perfectly apparent that in view of those [570] authorities, and from the point of view of reason, that where men are charged with conspiracy to do

a particular act, that it is a question, necessarily, of general or common design. In the case in the House of Lords, for instance, a man was charged with illegal operations; it was claimed that the operation was legal, and the Crown was permitted to show that he had performed other illegal operations.

Mr. FAULKNER.—Might I interrupt right there, if this witness was a defendant in that proceeding it would be competent to show that he was engaged in rum running with other vessels.

The COURT.—What difference does that make?

Mr. FAULKNER.—What difference does it make if a man who is not a party to this proceeding was a rum runner to other boats?

The COURT.—I assume that his landing was in connection with some defendant here.

Mr. FAULKNER.—The Court has to assume it from something not in the record.

Mr. RIORDAN.—It takes time to connect this up.

The COURT.—I will overrule the objection. If it is not connected up, it will be stricken.

Mr. GREEN.—I respectfully assign the Court's remarks regarding the prior conviction and being on bail at the present time of Sam Terry as prejudicial, and ask that the jury be instructed to disregard them.

The COURT.—Yes, you are correct about that. You will disregard that, gentlemen of the jury.

Mr. RIORDAN.—Read the question.

(Last question repeated by the reporter.)

A. Yes.

Q. What other boat prior to the "Quadra"?

A. The "Malahat." [571]

Mr. FAULKNER.—The same objection.

The COURT.—The same ruling.

Mr. FAULKNER.—Exception.

43.

The Court erred in admitting in evidence certain testimony over the objection of the defendants as will more fully appear as follows:

Mr. RIORDAN.—Q. What did you do in connection with the "Malahat"?

Mr. FAULKNER.—The same objection.

The COURT.—The same ruling.

Mr. FAULKNER.—Exception.

A. I took one load.

44.

The Court erred in admitting in evidence certain testimony concerning the activity of the witness Magruder with ships other than the "Quadra," to which evidence the defendants through their attorneys regularly objected, which objections were overruled by the Court, to which rulings the defendants through their counsel then and there duly excepted, as more fully appears in the bill of exceptions.

45.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. RIORDAN.—Q. What was your interest in landing that? Did you get anything for it?

Mr. FAULKNER.—The same objection, and leading, and no foundation laid, and not binding upon any defendant in this proceeding.

The COURT.—Overruled. [572]

Mr. FAULKNER.—Particularly leading.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

A. $100 a week.

46.

The Court erred in admitting in evidence certain testimony over the objection of the defendants by the witness Herbert J. Clance, as will more fully appear as follows:

Mr. RIORDAN.—Q. Now, did you help get the cargo on board of the "Viz-4"? A. Yes.

Mr. FAULKNER.—If your Honor please, may an objection be noted in the record prior to the answer to the question?

The COURT.—Yes.

Mr. FAULKNER.—Upon all of the grounds indicated in the objections to the testimony of Mr. Magruder, and I ask the Court at this time that it may be considered that all testimony that this witness is about to give concerning his contact with the "Quadra" be deemed objected to by each and all of the defendants, and the objection overruled and an exception noted.

The COURT.—Yes.

Mr. FAULKNER.—In the interest of expedition.

47.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. RIORDAN.—Q. When did he first employ you to do any work for him?

Mr. COGHLAN.—We object to that as not relevant, competent, or material, and upon the ground that no proper foundation has been laid for it.

The COURT.—It is impossible to tell, Mr. Coghlan. If he [573] hired him to spade up his garden, it could not hurt you any. I anticipate that the Government intends to lead up to something connected with this case.

Mr. RIORDAN.—That is true.

The COURT.—Overruled.

Mr. COGHLAN.—Exception.

A. About April or May.

48.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows.

Mr. RIORDAN.—Q. What was the work that he employed you to do?

Mr. COGHLAN.—We object to the question as immaterial, irrelevant and incompetent, calls for hearsay, no proper foundation has been laid for it, particularly no proper foundation connecting the incident intended to be adduced with the matter alleged in this indictment, that it is not within the issues of the case, and is an attempt to prove an overt act or overt acts prior to the establishment of a conspiracy, if there be any conspiracy; that it is not binding upon the defendant Quartararo, nor upon any of the defendants here.

The COURT.—What is your point, Mr. Goghlan, with regard to foundation?

Mr. COGHLAN.—There has been no foundation

here showing a connection of Quartararo with the commission of any offense against the United States, nor has there been any connection between him and the conspiracy, the objects of which are recited in the indictment.

The COURT.—Overruled.

Mr. COGHLAN.—Exception. [574]

A. Carrying liquor.

49.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. RIORDAN.—Q. Did you talk with him on the arrangement of carrying liquor? Answer that "Yes" or "No." A. Yes.

Q. How were you to carry the liquor?

Mr. COGHLAN.—We offer the same objection as to that, if it please your Honor, and upon the further ground that there is not, and, obviously there is not any foundation or connection between this employment and anything that pertains to the issues raised by the plea of not guilty to this indictment.

The COURT.—Overruled.

Mr. COGHLAN.—Exception.

A. By gasoline launch.

50.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. RIORDAN.—Q. What was the name of the gasoline launch? A. "California."

Mr. COGHLAN.—The same objection runs to that, and your Honor will allow me the same exception?

The COURT.—Yes.

Mr. RIORDAN.—Q. Where did you get the "California" from? A. From Sausalito.

Mr. COGHLAN.—We object to that as not relevant, material, or competent, and as having no bearing upon the issues of this case, and as not connected with this defendant, and having to do [575] with other people that are not concerned here, or with whom this defendant, or any of these defendants, is concerned or are concerned.

The COURT.—Overruled.

Mr. COGHLAN.—Exception.

Mr. RIORDAN.—Q. From whom in Sausalito did you get the boat "California."

Mr. COGHLAN.—The same objection and exception.

A. Well, he gave me the keys to the pilot-house.

Q. Who gave you the keys? A. Vincent.

Q. Vincent who? A. Quartararo.

Mr. COGHLAN.—The same objection, and I presume the same ruling and exception, your Honor?

The COURT.—Yes, the same ruling.

Mr. RIORDAN.—Q. Did you go out in that boat for liquor or not? Answer "Yes" or "No."

A. Yes.

Mr. COGHLAN.—Just a minute. Will your Honor allow the objection heretofore made to apply to that, and an exception?

The COURT.—Yes.

Mr. RIORDAN.—Q. Where did you go to?

Mr. COGHLAN.—The same objection and exception.

A. Outside of the Farallones.

51.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. RIORDAN.—Q. To what boat, first, if you went to any boat?

Mr. COGHLAN.—Just a minute. We object to that as not relevant, material or competent, upon the ground that no proper foundation has been laid, and upon the further specific ground [576] that it may involve something that has absolutely nothing to do with the commission of any offense charged in this indictment, and that it is the duty of the district attorney first to show by a proper foundation that there is any such connection, if there be.

The COURT.—Overruled.

Mr. COGHLAN.—Exception.

Mr. RIORDAN.—Read the question.

(Last question repeated by the reporter.)

A. The first boat, you want to know?

Q. Yes. A. That was the steamer "Norburn."

52.

The Court erred in denying the motion of the attorneys for the defendants to strike out the answer to the question propounded by the Court to the prosecution's witness Sam Crivello on direct examination, as follows:

The COURT.—I will ask him a question first:

Q. Did you go to the steamer "Norburn" for liquor? A. Yes.

Q. Did you get liquor there? A. Yes.

Q. What did you do with it when you got it?

A. Took it ashore.

Q. Who did you deliver it to?

A. Vincent Quartararo.

Q. The defendant Quartararo? A. Yes.

The COURT.—Motion denied.

Mr. COGHLAN.—We now move that the matter be stricken out which your Honor elicited, on the same grounds interposed and underlying the motion that we last made.

The COURT.—Motion denied.

Mr. COGHLAN.—Exception. [577]

53.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

The COURT.—You mean from the "Norburn"?

Mr. RIORDAN.—From the "Norburn."

Mr. COGHLAN.—In April or May, 1924?

Mr. RIORDAN.—Yes.

Mr. COGHLAN.—We object to that on all of the grounds interposed, that it is not relevant, material or competent, and there is no proper foundation that has been laid, and I call your Honor's attention particularly to the fact that the treaty between the United States and Great Britain was made May 22, 1924, and that that is pleaded in the indictment.

The COURT.— It could not make any difference. These defendants here are charged with a con-

spiracy. Now, under familiar principles, if the conspiracy took place at another time, or under equally familiar principles, if there was a conspiracy between the defendant Quartararo and this defendant, it would be sufficient to convict, and it would be sufficient to convict whether it were before or after the time that the treaty was negotiated between the United States and Great Britain. Furthermore, it is equally apparent to me, from all of the authorities which I had occasion to review in a previous opinion in this case that if there was a crime committed, and it was committed partly without, if it was beyond the limits which might be specified in any case,—it was committed partly without and partly within this jurisdiction, and, therefore, it makes no difference whatsoever, so far as this part of it is concerned, at least, whether or not the liquor was obtained outside an hour's steaming, or four marine leagues, or whatever it is. [578]

Mr. COGHLAN.—Of course, the position that I personally take, if I may briefly state it, is this, that an accusatory paper of this character must inform the defendants of the particular conspiracy with which they are charged, and that it is not proper for the district attorney to allege matters such as are contained here, and which exclusively relate to the transaction affecting one vessel, to wit, the "Quadra," and surprise us by bringing into court matter that has absolutely nothing to do with the conspiracy that is attached to and woven around about and made a part of what occurred

upon the "Quadra," and what occurred between this shore and the "Quadra" and no other vessel. It seems to me this ought to apprise my client, and the other defendants, here, of what they are brought into Court to defend themselves against, and it would be impossible if it were the claim of the prosecution here and your Honor should sustain that claim, that any offense committed against the laws of the United States in connection with the prohibition act, or the Tariff Act of 1922 might be imported here for us to defend; absolutely impossible, our hands would be tied. We are only guided by this instrument, and so have we been guided, and we have thought that the proof of the prosecution would be, except in so far as it bore upon the issues here that were raised by the combination, of the accusation of the conspiracy, and the references to the particular vessel involved; it would be impossible for us to defend unless we depended upon that. That is the position that I take.

The COURT.—I do not know, Mr. Coghlan, to what extent your researches have gone in the matter of authorities, but the rule is thoroughly well settled in this Court without a single dissent, and has been so often presented here, for instance, in the Nan Patterson Case, in the recent case of the policemen that [579] were here, and in a dozen other cases, that the thing, after all, is the conspiracy, and the defendants, having been apprised that the Government charged that they had entered into a conspiracy to violate certain statutes

that any acts which were in violation of those statutes and which concerned any of the defendants, and any other person, or more than one person, so that it would constitute, under the law, a conspiracy, is admissible. We have had that here many times. The authorities are perfectly clear upon this subject, and the reasoning is equally clear; and it is equally well settled that where the indictment may charge a single overt act, that any number of overt acts which are in pursuance of it, or in connection with the conspiracy, are admissible. the objection is overruled.

Mr. COGHLAN.—Exception.

Mr. RIORDAN.—Will you read the last question?

(Last question repeated by the reporter.)

A. A load of liquor.

54.

The Court erred in admitting in evidence testimony of the witness Sam Crivello on direct examination concerning a trip to the "Malahat" over the following objection:

Mr. COGHLAN.—We now ask that your Honor allow an objection to go to that, that we made heretofore.

The COURT.—Yes.

Mr. COGHLAN.—And the same exception.

55.

The Court erred in admitting in evidence further testimony from the witness Sam Crivello concerning trips to the "Malahat" over the objections of attorneys for the defendants, which objections

were by the Court overruled, and to which rulings defendants duly excepted. [580]

56.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. RIORDAN.—Did you meet another party over at Vincent's place of business who was introduced to you by Vincent as C. H.? A. Yes, sir.

Mr. COGHLAN.—That is of course a leading question and suggestive of an answer and puts the answer clearly in the mouth of the witness.

Mr. RIORDAN.—And yet a proper question.

The COURT.—Objection overruled.

Mr. COGHLAN.—Well, I don't think it is proper.

The COURT.—I have ruled, Mr. Coghlan.

Mr. COGHLAN.—Your Honor will allow us all the objections heretofore interposed?

The COURT.—Yes, objection overruled.

Mr. COGHLAN.—Exception.

57.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. RIORDAN.—Q. You brought out some empty sacks? A. Yes.

Mr. COGHLAN.—We move that that be stricken out as not responsive to the question, and we ask for the additional objection that it is hearsay, and not material, relevant or competent, and no proper foundation for it.

The COURT.—Well, of course, Mr. Coghlan, a statement made by one of the parties to a conspiracy during the progress of the conspiracy is not hearsay and it certainly would not be hearsay as [581] to him. But I do not understand quite what the witness has said.

Q. You say you brought out some empty sacks; what do you mean by that, brought out from where?

A. From the city here.

Q. You took them where?

A. To the "Quadra."

Q. What was the conversation you had with Mr. Belanger?

A. That was to take some sacks out, empty sacks.

Q. To the "Quadra"? A. Yes.

Q. What did he say about it?

A. He asked me if I would take them out and so I said yes.

Mr. RIORDAN.—Your Honor will recall that there is testimony here with reference to the "California."

The COURT.—Yes, I remember that. Motion denied.

Mr. COGHLAN.—Exception.

58.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. RIORDAN.—Q. During your trips out to these boats did you see any other small boats like your own meeting the "Malahat" and the "Quadra"?

Mr. COGHLAN.—We offer the same objection, and the further objection that that has nothing to do with this case, it is not material, relevant or competent.

The COURT.—Objection overruled.

Mr. COGHLAN.—Exception.

A. You mean small boats?

Mr. RIORDAN.—Q. Yes, I do.

A. I met the "Ocean Queen," the "Viz-4" and another boat which has no name, it is tied up down at the wharf.

Q. Any other that you recall?

A. The "Florence." [582]

59.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. RIORDAN.—Q. Just tell us about that. Try and fix the time as near as you can, on the first trip?

Mr. COGHLAN.—We object to that as not material, relevant or competent, and upon all of the grounds heretofore interposed, and on behalf of each and all of these defendants.

The COURT.—Objection overruled.

Mr. COGHLAN.—Exception.

A. It was in the middle of August.

60.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. RIORDAN.—Q. And when these attorneys

are telling you, fixing your dates as the 1st of September, might it be the 1st of October—

Mr. GREEN.—Just a moment.

Mr. RIORDAN.—Just allow me to finish the question.

Mr. COGHLAN.—The question is not fair.

Mr. RIORDAN.—When it comes to fairness, we are at least entitled to finish a question, and then you can make all the objections you want. Read the question.

(Last question repeated by the reporter.)

I mean when you referred to the last trip.

Mr. GREEN.—Just a moment. I object to the question as not being proper redirect examination, and an attempt to bolster up the witness, and change his absolute testimony.

Mr. RIORDAN.—Oh, no. [583]

Mr. GREEN.—Leading and suggestive.

Mr. RIORDAN.—I think it is fairly clear, but I am making it a little more clear.

The COURT.—He may answer.

Mr. GREEN.—Exception.

The COURT.—You had better read the question to him.

(Last question repeated by the reporter.)

A. Well, about the dates I don't hardly remember. I don't think I could be that far off, from September to October.

61.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. GILLIS.—Q. Did you see Mr. Quartararo on that day?

Mr. COGHLAN.—We object to that on the same grounds heretofore interposed by both counsel.

The COURT.—Objection overruled.

Mr. COGHLAN.—We reserve an exception.

A. Yes, sir.

62.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. GILLIS.—Q. Mr. Pearson, these exhibits 30 to 36 inclusive, did you see these on the date that Mr. Hoskins testified to, on Monday, the 10th of November, 1924?

Mr. FAULKNER.—The same objections, your Honor, concerning that, subsequent to the consummation of the conspiracy.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

A. Yes. [584]

63.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. GILLIS.—Q. Did you have any conversation with Mr. Quartararo with reference to the redemption of some one dollar bills?

Mr. COGHLAN.—We object to that as leading and suggestive of an answer, and with a great deal of regret assign that as misconduct on the part of the district attorney.

The COURT.—Objection overruled.

Mr. COGHLAN.—Exception.

A. I did.

64.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. GILLIS.—Q. What was that conversation?

Mr. COGHLAN.—We object to that on the same grounds.

The COURT.—Objection overruled.

Mr. COGHLAN.—Exception.

A. Mr. Quartararo asked me if torn bills could be redeemed, or words to that effect.

Mr. COGHLAN.—We now move that that be stricken out as having absolutely no connection with this case, and as not material, relevant or competent, and no proper foundation laid, and as being hearsay as to other defendants, and tending in no way to connect the defendants with the offense here charged.

The COURT.—The motion is denied.

Mr. COGHLAN.—Exception.

Mr. GILLIS.—Q. What else was said? [585]

A. I think I asked Mr. Quartararo what sort of bills he had reference to and asked him if he had the bills with him and he said, "No."

65.

The Court erred in denying the motion of the attorneys for the defendants to strike out the answer to the question propounded by the prosecution to their witness Pearson, as follows:

Mr. GILLIS.—Q. Did you have any talk with the man that brought them in? A. Yes, I did.

Q. Now let us have it?

A. I don't recall just what it was. He said he had some torn bills. I told him I didn't have time to look at them; that was right during the rush hour at noon. I asked him if he would leave them on receipt and I would look at them and if possible would collect on them for him. He said he would do that. I asked him if he could come back later the same day and he said he would if he could, but otherwise he would be in during the early part of the next week.

Mr. FAULKNER.—Your Honor, might I interrupt to object to this conversation as immaterial, irrelevant and incompetent as to any party not connected with this proceeding, and I move to strike out the answer of the witness.

The COURT.—The objection is overruled and motion denied.

Mr. FAULKNER.—Exception.

66.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. GILLIS.—I now offer the photostat copy of that part of the articles of incorporation, No. 15,006, which has just been testified to, showing the signature of Vincent Quartararo.

Mr. COGHLAN.—We object to it on the ground that no proper [586] foundation has been laid

for it, and that it is not material, relevant or competent.

Mr. GILLIS.—I understand your objection would not go to the fact that it is simply a photostat copy?

Mr. COGHLAN.—No.

The COURT.—The objection is overruled.

Mr. COGHLAN.—Exception.

(U. S. Exhibit 37.)

67.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. GILLIS.—Q. Do you know whether or not that is the signature of Mr. Quartararo?

A. Yes, that is the signature of Vincent Quartararo, but I don't know who Vincent Quartararo is.

Mr. COGHLAN.—We move that the answer be stricken out as not responsive to the question. We also desire to object to the question on the ground that there is no proper foundation laid for it, and it is not material, relevant or competent.

The COURT.—That is the signature card which the bank uses for identification for checks, kept in the regular course of business?

A. Yes, that is the regular original signature card.

The COURT.—Motion denied and objection overruled.

Mr. COGHLAN.—Exception.

68.

The Court erred in admitting in evidence that certain U. S. Exhibit No. 38 as will more fully appear as follows:

Mr. GILLIS.—In place of offering the original card, I desire to offer a photostat copy of the card. [587]

Mr. COGHLAN.—As to that we have no objection.

Mr. FAULKNER.—Save the objection, of course, it is not binding upon any of the other defendants in the case.

The COURT.—It is only for the purpose of furnishing an exemplar of the handwriting?

Mr. GILLIS.—That is the only purpose for which it is offered. I offer it in evidence.

Mr. COGHLAN.—We object to it on the ground there is no proper foundation, no connection between the defendant and any other thing in the record, and it is not relevant, material or competent.

The COURT.—Overruled.

Mr. COGHLAN.—Exception.

Mr. FAULKNER.—Did your Honor pass upon my objection?

The COURT.—I overrule the objection.

Mr. FAULKNER.—Exception.

(U. S. Exhibit 38.) [588]

69.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. GILLIS.—Q. Have you checks No. 301 and 303 to the account of Vincent Quartararo?

A. Yes.

Q. Those two checks are what, Mr. Shields?

Mr. COGHLAN.—We object to that on the same grounds, that there has no foundation been laid, it is not material, relevant or competent to anything here.

The COURT.—Overruled.

Mr. COGHLAN.—Exception.

Mr. GILLIS.—Q. Are they checks of Vincent Quartararo? A. Yes.

70.

The Court erred in admitting in evidence those certain exhibits numbered U. S. Exhibit 39, U. S. Exhibit 40, and U. S. Exhibit 41, and each of them, as will more fully appear as follows:

Mr. GILLIS.—In place of the two original checks I offer in evidence, may it please the Court, photostatic copy of check No. 301, and ask that it be introduced in evidence, the offer being made solely for the purpose of furnishing an exemplar of Mr. Quartararo's handwriting.

Mr. COGHLAN.—We object to that on the ground that no proper foundation has been laid, it is not material, relevant or competent.

The COURT.—Overruled.

Mr. COGHLAN.—Exception.

(U. S. Exhibit 39.)

Mr. GILLIS.—I offer in evidence check No. 303 of Vincent Quartararo on the Bank of Italy, a photostat copy of the original, and ask that it be

introduced in evidence, it being introduced [589] for the sole purpose of furnishing an exemplar of Mr. Quartararo's handwriting.

Mr. COGHLAN.—The same objection.

The COURT.—The same ruling.

Mr. COGHLAN.—Exception.

(U. S. Exhibit 40.)

Mr. GILLIS.—Have you the statement sheet with you for these particular checks which were delivered November 5, 1924, that were delivered to him—they are the statements of July 31, August 30, October 31, November 30.

A. You mean the signature card for the statements: Is that what you mean?

Q. Yes, that is what I mean. Is this the signature card for statements of Cincent Quartararo?

A. That is a receipt card.

Mr. COGHLAN.—We make the same objection and take an exception.

Mr. GILLIS.—I offer in evidence, may it please the Court, a photostat copy of the receipt card of Vincent Quartararo to the Bank of Italy, the sole purpose being to furnish an exemplar of the handwriting of Vincent Quartararo.

Mr. COGHLAN.—The same objection and exception.

(U. S. Exhibit 41.)

71.

The Court erred in admitting in evidence that certain U. S. Exhibit No. 42, as will more fully appear as follows:

Mr. GILLIS.—I now ask that a photostat copy

of this affidavit of registration be received in evidence, the sole purpose being for the purpose of furnishing an exemplar of the handwriting of Vincent Quartararo.

Mr. COGHLAN.—We offer the same objection, your Honor.

The COURT.—Objection overruled. [590]

Mr. COGHLAN.—Exception.

(U. S. Exhibit No. 42.)

72.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Q. How did you get in touch with him about that?

A. Well, one day he ring me up at my home and—

Mr. COGHLAN.—Just a minute. We object to this, if the Court please, as not material, relevant, or competent, and on the ground that no proper foundation has been laid.

The COURT.—Objection overruled.

Mr. COGHLAN.—Exception.

The COURT.—This is the man who has pleaded guilty, is it?

Mr. RIORDAN.—Yes, your Honor.

A. (Continuing.) —and he says he wants to see me at the cocktail place on Minna Street. When I went over there I don't see Vince, I see C. H.

73.

The Court erred in admitting in evidence certain

testimony over the objection of the defendants, as will more fully appear as follows:

Q. Who was there? A. The father of Vince.

Q. What did the father of Vince say?

Mr. FAULKNER.—If the Court please, we object to that as immaterial, irrelevant and incompetent, hearsay and not binding upon any person before the Court on the issues involved in this indictment.

The COURT.—Q. Was C. H. there at the time?

A. Yes, sir.

Q. And did he hear what Vincent's father said?

A. He says, "That is the man that my son rang up." [591]

Q. He said that to C. H.? A. Yes.

Q. "This is the man that my son rang up"?

A. Yes.

The COURT.—I will overrule the objection.

Mr. FAULKNER.—Exception.

74.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Q. What did he say, if anything?

Mr. FAULKNER.—I object to that as not binding upon any other defendant in this case.

Mr. COGHLAN.—And we object to it as hearsay and not material, relevant or competent, no proper foundation.

The COURT.—Objection overruled.

Mr. COGHLAN.—Exception.

Mr. FAULKNER.—Exception.

A. He said he wanted me to go to work outside. At first he says: "Have you got a job?" I said, "Yes." He says, "Do you want to go to work outside?" "What kind of work have you got?"

75.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. RIORDAN.—Q. As to the load that you were to bring ashore, did he tell you where you were to bring it? A. Yes.

Mr. GREEN.—Just a minute now. I object to this line of examination, and also I object to this question particularly on the ground that it is leading and suggestive.

The COURT.—Objection overruled.

Mr. GREEN.—Exception.

Mr. COGHLAN.—And of course I offer all the objections previously [592] urged, your Honor.

The COURT.—Objection overruled.

Mr. COGHLAN.—Exception.

Mr. RIORDAN.—Q. And where did he say?

A. Drakes Bay.

76.

The Court erred in denying the motion of the attorneys for the defendants to strike out the answer to the question propounded by the prosecution to their witness Marina Crivello upon direct examination as follows:

Q. And what boat did you go to, if any, when you went out on this errand?

A. I go to the "Malahat."

Mr. COGHLAN.—We now move that that be stricken out as not material, relevant or competent and having nothing to do with the issues here involved, and no foundation.

The COURT.—Motion denied.

Mr. COGHLAN.—Exception.

77.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Q. What did you do with the 40 barrels of whiskey? A. I put them in my boat.

Q. Who did you see at the "Quadra"?

Mr. COGHLAN.—We offer the same objection to that.

The COURT.—The same ruling.

Mr. COGHLAN.—Exception.

A. I see the captain, the head man.

78.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows: [593]

Q. How did you know who to give it to at Drakes Bay?

Mr. FAULKNER.—That is objected to as immaterial, irrelevant and incompetent, and there is nothing in the record that he gave it to any person whomsoever.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

A. C. H. says "When you go to Drakes Bay ask for Joe."

79.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Q. Which one? A. At the cocktail place.

Q. Did you get in touch with Vincent at the cocktail place?

Mr. COGHLAN.—That is leading and suggestive of an answer.

The COURT.—Let him answer; objection overruled.

Mr. COGHLAN.—Exception.

A. I saw C. H.

80.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Q. What did he say when you talked to him?

Mr. COGHLAN.—I object to that as hearsay, not material, relevant or competent, and no foundation.

The COURT.—Objection overruled.

Mr. COGHLAN.—Exception.

A. He said, "How much do you want"?

81.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows: [594]

Q. And did you finally get your money?

Mr. FAULKNER.—I object to that as immaterial, irrelevant and incompetent.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

A. He gave me $500 on the 28th day of January.

82.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Q. Who gave that to you? A. Vince.

Mr. FAULKNER.—*No* we object to that if the Court please, as immaterial, irrelevant and incompetent, and a fact occurring subsequent to the indictment in this case, and not binding on any other defendant in this proceeding.

Mr. COGHLAN.—And we move that it be stricken out, may it please the Court, upon the same grounds.

The COURT.—That is not a statement, that is a specific act.

Mr. FAULKNER.—It is an act or transaction occurring with one of the alleged conspirators subsequent to the consummation of the conspiracy alleged in the indictment.

The COURT.—Yes, I know, but the rule of one binding the others must be covered by the instructions because in any event it would be binding upon Mr. Quartararo. The objection will have to be overruled.

Mr. RIORDAN.—And as to them, your Honor, I take it the conspiracy has not terminated, that the fruits of the transaction had not terminated.

The COURT.—That of course does not appear yet. I will cover it by instructions so that the other defendants will be protected.

Mr. COGHLAN.—And your Honor will allow the additional objection [595] that there is not any foundation?

The COURT.—Overruled.

Mr. COGHLAN.—Exception.

83.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear, as follows:

Q. Did you also have a talk then with Vince about this payment?

Mr. FAULKNER.—The same objection.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

A. Sure.

84.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear, as follows:

Mr. RIORDAN.—Q. What did Vince have to say about it?

Mr. COGHLAN.—We offer the same objections that heretofore have been interposed; it is not material, relevant or competent, no proper foundation, and it concerns a time subsequent to the transactions referred to in the indictment.

The COURT.—Objection overruled.

Mr. COGHLAN.—Exception.

A. I would go and see Vincent Quartararo every week, every two weeks, every month.

Mr. COGHLAN.—I move that that be stricken out as not responsive to the question.

The COURT.—Motion denied.

Mr. COGHLAN.—Exception.

A. (Continuing.) —And he kept telling me all the time, when the case was over with he would give me the money. [596]

Mr. COGHLAN.—We move that that be stricken out on the ground that it is not responsive, and is not certain as to dates, and it is not material, relevant or competent, and it has no proper foundation in the evidence.

The COURT.—Motion denied.

Mr. COGHLAN.—Exception.

85.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear, as follows:

Mr. GILLIS.—Q. In your opinion, from an examination of these exhibits, who wrote the several pages upon which writing appears, the writing in that exhibit? In your opinion, who wrote it? (Referring to U. S. Exhibit 6.)

Mr. GREEN.—I also object to that on the ground that it was seized and is being used in violation of the rights of the defendants under the Fourth and Fifth Amendments to the Constitution; it is an attempt to make a man a witness against himself.

Other objections were made, as more fully appear in the bill of exceptions.

The COURT.—I think the objection would be good as to any of them so far as that particular paper is concerned. I will overrule the objection.

Mr. GREEN.—Exception.

A. The same person wrote this log, with the exception of the writing identified on the pages as one, two, three, four and so on, in red ink, and with the exception of the writing on page five, as signed the ship's articles, which are People's Exhibit 19, with the name "J. A. McLennan" followed by the words "Port Hastings, Vancouver, Coal Harbour." The writing in Government's Exhibit No. 6 to which I particularly refer is as follows: The [597] three lines on the upper right-hand corner of page one, all of the writing appearing in pencil on page two, all of the writing appearing in pencil on page three, all of the writing appearing in pencil on page 40, 41, 42, 43, 44 and 45.

86.

The Court erred in admitting in evidence certain testimony over the objection of the defendants as will more fully appear, as follows:

Mr. GILLIS.—Q. Showing you Gevernment's Exhibit 17, after an examination of the several exhibits heretofore shown you, have you formed an opinion as to who wrote the entries in that book?

Mr. GREEN.—The same objection as heretofore made.

The COURT.—Objection overruled.

Mr. GREEN.—Exception.

A. Yes.

87.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear, as follows:

Mr. GILLIS.—Q. Mr. Heinrich, in your opinion

who wrote or printed the items on the back of the one dollar bills which go to make up Government's Exhibit 30?

Mr. COGHLAN.—We offer the same objection again, the proper foundation has not been laid, it is not material, relevant or competent and calls for the opinion of the witness upon a matter that he cannot—well, the bills are not in evidence, so far as that is concerned. There has been absolutely no foundation. There is nothing here to indicate—and that is one of the fundamental objections—that these bills were ever used in connection with any of these transactions with which your Honor [598] has become familiar through the lips of the witnesses who have been brought to the witness-stand here—absolutely nothing but a statement by the district attorney.

The COURT.—Objection overruled.

Mr. COGHLAN.—Exception.

Mr. FAULKNER.—We make the same objection that your Honor sustained a moment ago, that he cannot testify who wrote them, he can only testify that the handwriting that he has now and is examining is similar to certain other handwriting.

The COURT.—No, he can do no more than that. He can give his opinion with regard to the person who wrote it, if there are exemplars before the Court of the handwriting of that person. You may answer the question.

Mr. FAULKNER.—Exception.

A. They were written by the same person, written and printed by the same person who has

written the substance and signature of the exemplars Government's Exhibits 39 and 40, and who has written the name "V" or "Vincent Quartararo" as it appears on Government's Exhibits 38, 41, 42 and 37.

88.

The Court erred in admitting in evidence testimony concerning the handwriting on Government's Exhibits 33, 34, 30, 32, 31, as more fully appears in the bill of exceptions on file herein, and which are, and which each of them would be, similar to assignment No. 87.

89.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear, as follows:

Mr. COGHLAN.—Was there a limited purpose for their reception, for the purpose of comparison, or what? [599]

Mr. GILLIS.—You mean the bills?

Mr. COGHLAN.—The bills.

Mr. GILLIS.—The bills were received in evidence for all purposes.

Mr. COGHLAN.—We desire at this time, your Honor—and I think we need not object hereafter in addition to this—to object to the evidence which is now being adduced upon the ground it is not material, relevant or competent, on the ground that these bills have no foundation in the facts that have been up to this date adduced; that there is no evidence here which can be used as a predicate for their use in evidence in this manner, or, in fact,

we claim for their reception in evidence at all upon the general issue, because there is no evidence connecting them with any transaction affecting either the "Quadra" or the "Malahat" or any of the several small boats to which reference has been made here in the evidence, or any other source of intoxicating liquors claimed by the prosecution, and because these bills are in no way connected with any of the persons claimed as conspirators here, or claimed to be conspirators by the prosecution, or persons having to do with the conspiracy charged; and because they have not been shown to have been used in connection with any alleged conspiracy, or any of the operations here claimed by the Government, or to have been used at all by any persons here concerned as defendants, or any person unknown and claimed to be a conspirator, or in any manner to effect the purpose or object of the conspiracy alleged and claimed by the prosecution.

The COURT.—Objection overruled.

Mr. COGHLAN.—To which we reserve an exception.

90.

The Court erred in admitting in evidence that certain document marked U. S. Exhibit 51, which more fully appears as follows: [600]

Mr. GILLIS.—I now offer in evidence, may it please the Court, certified copies of the certificate to the Consolidated Exporters' Corporation, Ltd., notice of change of directors, dated December 1, 1924, showing a change as of June 2, 1924, the annual report of the Consolidated Exporters, Ltd.,

under the Companies Act to October 31, 1923, the annual report of the Consolidated Exporters, Ltd., to December 10, 1924, under the Companies Act of 1921.

These instruments are certified by H. G. Garrett, the Registrar of Companies.

The COURT.—Duly certified?

Mr. GILLIS.—In the same manner in which the one just received in evidence has been certified.

Mr. GILLIS.—I now offer these in evidence and ask that they be marked Government's exhibits next in order.

Mr. CROWLEY.—To the offer, if your Honor please, we object upon each of the following grounds severally and distinctly:

In addition to the objection that the indictment does not state facts sufficient to constitute any offense, we object on the ground that it is immaterial, irrelevant and incompetent, not within the issues, self-serving, hearsay, *res inter alios acto,* too remote from the time at issue, and not the best evidence.

There was and is no evidence showing or tending to show *prima facie,* or at all, the existence of the alleged conspiracy, or of any conspiracy, and there is no evidence showing or tending to show that we were or are connected therewith, had any knowledge thereof, or participated therein.

There is no evidence or foundation to connect us with the instrument offered, or that we are personally or otherwise or at all responsible therefor, par-

ticipated therein, or had any knowledge thereof, or that the same was made or kept under our [601] direction, or with any knowledge concerning the same or its contents.

No foundation therefore has been laid as to us.

(There was and is no foundation for the admission of this instrument in evidence.

There is no attestation or authentication thereof in due form of law, or as required by law, or at all; there was and is no warrant therefor under any federal statute, and no compliance with the requisites, if any, of the state statutes, if any.

The said instrument was and is incomplete and not entire, specifically among other things in this, that there is not contained therein the articles of association themselves issued, there is no evidence or certificate or attestation that the clerk or person mentioned was or is the legal custodian or keeper of said record, or of the original thereof, or had any right of custody thereof, or that said person had or has any authority to furnish any purported or authenticated copy thereof; there is no seal of the or any court annexed or attached to the purported certificate; there is no certificate of the Judge, or Chief Justice or presiding magistrate that the attestation purported to be made here is in due form.

It does not appear that the instrument is one which is authorized or provided for by the law of the land whence it comes; there is no proof of any foreign law or statute of such land, requiring such record or statement to be filed or recorded as an

official or other duty; there is no proof as to the force or effect or faith or credit, if any, said instrument has, if any, under said or any law or statute or usage in the courts of the place whence the instrument purports to come; nor is there any evidence or certificate under seal of the country or sovereign showing or tending to show that the same was or is a valid or [602] subsisting document of such country or land; there is no certificate under the seal of the said country or sovereign thereof; and the said purported consular certificate was or is not evidence herein, and the same was and is invalid being without the, or any of the, stamps required by law; there is no evidence that this purported copy is duly certified by the officer having the legal custody of the original, or what under the law of said country or land was or is due certification or attestation thereof; the instrument offered is not the record of any court and is nonjudicial in its character.

We are prepared to defend that objection, your Honor.

The COURT.—Let me look at it.

Mr. FAULKNER.—If the Court please, I think that, for the purpose of the Court in passing on this matter, Mr. Gillis, should indicate the purposes for which it is offered.

The COURT.—If you will let me look at it maybe I can find out.

Mr. CROWLEY.—What your Honor is looking at now is the memorandum of association.

The COURT.—The objection is overruled.

Mr. FAULKNER.—If your Honor please, before the ruling is made may this be included as a part of the objection, the very cogent objection that it is immaterial, irrelevant and incompetent, the corporation set forth in the instrument not being a party to the conspiracy, not being connected by any evidence of conspiracy; and particularly on behalf of the defendant Belanger that there is no evidence in the record or offered in evidence that he was a director or had anything to do with the corporation at any time claimed in the indictment that a conspiracy existed.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

Mr. CROWLEY.—We note an exception, your Honor. [603]

(U. S. Exhibit No. 51.)

91.

The Court erred in admitting in evidence that certain document marked U. S. Exhibit 52, which more fully appears as follows:

Mr. GILLIS.—I now offer in evidence, your Honor, a certified copy of the report outwards from the port of Vancouver, British Columbia, of the steamship "Quadra," dated September 9, 1924.

Mr. CROWLEY.—We make the same objection we have heretofore made, your Honor, being the last objection I personally made to the last offer.

Mr. FAULKNER.—The same objection in its entirety, and the further objection that it is full of erasures and several kinds of handwriting.

The COURT.—Objection overruled.

Mr. CROWLEY.—Exception.

(U. S. Exhibit No. 52.)

92.

The Court erred in admitting in evidence that certain document marked U. S. Exhibit 53, and which more fully appears as follows:

Mr. GILLIS.—I now offer in evidence, may it please the Court, the report outwards from the port of Vancouver, British Columbia, of the auxiliary schooner "Malahat," May 23, 1924, duly certified as the other exhibits offered are certified.

Mr. CROWLEY.—We make the same objection as heretofore specifically and at length made to Exhibit No. 51.

Mr. FAULKNER.—We desire to supplement that, your Honor, the steamer "Malahat" is not a party to this conspiracy, and the evidence contained therein can only be binding upon certain of the defendants that are connected with the "Malahat," and it [604] would be immaterial, irrelevant and incompetent and the proper foundation not laid as to any other defendant, particularly the officers and members of the crew of the "Quadra" and the defendant Belanger.

The COURT.—Objection overruled.

Mr. CROWLEY.—Exception.

Mr. FAULKNER.—And also all of the other defendants.

Mr. COGHLAN.—We reserve an objection.

(U. S. Exhibit No. 53.)

93.

The Court erred in admitting in evidence that

certain document marked U. S. Exhibit 54, and which more fully appears as follows:

Mr. GILLIS.—I now offer in evidence the report outwards from the port of Vancouver, British Columbia, dated July 5, 1924, of the steamship "Coal Harbour."

Mr. CROWLEY.—The same objection we have made at length to Exhibit No. 51.

The COURT.—Was there any evidence, Mr. Gillis, that any of these small boats transferred any liquor from the "Coal Harbour"?

Mr. GREEN.—No, your Honor.

Mr. GILLIS.—In connection with the "Coal Harbour" I simply wish to call your Honor's attention to this fact: That the records of McLennan's log, which have been admitted in evidence, of date October 6, reads as follows: "Steamer 'Coal Harbour' in sight about ten a. m., transferred 232 cases Gordon Gin in boats from 'Coal Harbour.'"

The COURT.—Yes. Objection overruled.

Mr. CROWLEY.—Exception.

Mr. FAULKNER.—Exception.

(U. S. Exhibit No. 54.) [605]

94.

The Court erred in overruling the motions of the defendants to strike out certain of the evidence, as will more fully appear, as follows:

Mr. FAULKNER.—I, at this time, on behalf of all of the defendants, jointly and severally, move the Court to strike from the evidence Exhibits 3, 4, 5, photos of the "Quadra," Exhibit No. 6, the

log of the "Quadra," photos 8 to 15, inclusive, of the "Quadra," the slip signed by some person whose handwriting could not be identified, Exhibit 17, the mate's log—

The COURT.—It is not the mate's log, at all; it is the engine-room log. It is headed that way. As a matter of fact, it is the engine-room log.

Mr. FAULKNER.—That is the manner in which they offered the record.

The COURT.—I understand what you mean.

Mr. FAULKNER.—The certificate of registry, the ship's articles, the sacks of liquor, Exhibits 20 and 21, the kegs of liquor, Exhibits 22 and 23, the box of liquor, Exhibit 24, order for box, Exhibit 25, tags, Exhibit 26, tag Exhibit 27, Exhibits 30 to 36, inclusive, the currency bills, and all of the exhibits showing large photostat copies of handwriting in connection with any book, document, or instrument seized from the "Quadra." The motion to exclude that particular evidence, if your Honor please, is based upon the announcement of the Court at the time that all of that evidence was permitted to go into the record subject to being connected up, on the theory that a conspiracy must be shown before any of the evidence would be admissible; on the further ground that as to the defendants, officers and members of the crew of the "Quadra," the exhibits referred to, taken from the "Quadra," were seized in violation of the rights of the said defendants under the Fourth and Fifth Amendments, that they were seized pursuant to an [606] illegal arrest of these defendants, and should not, under any circumstances, be admissible in evi-

dence. I supplement the grounds of this motion in particular by all of the grounds urged to your Honor on the motion to suppress and exclude evidence.

Now, then, the Court will, in that regard, have in mind that under the law the seizure of the "Quadra" could only take place at a distance that could be traversed by some vessel with which the "Quadra" was dealing, that could travel the distance from the point of seizure to the North Farallones in one hour, and the record affirmatively shows in this case, if the Court will permit me to indicate it to you, that the "C–55" was the only vessel that got in that position, but it has not been affirmatively shown that the "C–55" was a vessel intended for use in conveying liquor to the United States. The record affirmatively shows in this case that the "C–55" was transferring liquor from the "Coal Harbour" to the "Quadra." There is not in the record any evidence that any vessel with which the "Quadra" was dealing could have traversed the distance from the place of seizure to the "Quadra," or the place at which they dealt with the "Quadra" in less than one hour. Furthermore, the record in this case does not affirmatively establish that assuming that the "C–55" was dealing with the coast of the United States, that it could have, under the circumstances, presented in the record, traversed the distance from the point of seizure of the "Quadra" to the North Farallones in one hour. We respectfully submit that the burden was upon the Customs

Revenue Agent, at the time of the seizure of the "Quadra," if they depended upon the speed of the "C–55" to have at that time, and under those circumstances, traversed the distance from the point of seizure of the "Quadra" to the North Farallones; it was [607] quite within their power to do so, and their failure so to do leaves this Court without jurisdiction to consider all of the evidence seized, as I have indicated, and as the record discloses, from the "Quadra" under these circumstances; and I respectfully ask the Court to suppress all such evidence, and direct the jury to disregard it.

The COURT.—Motion denied.

Mr. FAULKNER.—Exception.

95.

The Court erred in overruling the motion of the defendants requesting the Court to direct the jury to acquit the defendants, as more fully appears as follows:

Mr. FAULKNER.—At this time, if your Honor please, I move the Court on behalf of the officers, master and members of the crew of the "Quadra," and defendant Belanger, jointly and severally, to acquit the defendants, and all of them, that I have mentioned. Said motion is based upon the following grounds:

First. The indictment No. 15,914 does not state facts sufficient to constitute a cause of action; particularly directing the Court's attention that this is a conspiracy to violate the Tariff Law, the language of which law reads, that any person who

imports merchandise into the United States contrary to law is guilty of an offense, and the law which it is claimed they violated has never been brought to their attention by indictment, or by the district attorney—never brought to the attention of any of these defendants. The venue as to the defendants officers, master and members of the crew has not been shown.

Second. The Court has not now, and never has had at any stage of this proceeding jurisdiction of the persons of said defendants, or either of them.

Third. The Court has not jurisdiction as to these moving [608] defendants of the subject matter of the offense pleaded or attempted to be pleaded in this indictment, or of the conduct of these moving defendants at all.

Fourth. The *corpus delicti* of the offense has never been established.

Fifth. There is nothing in the record showing a conspiracy and/or an unlawful combination of any kind to violate the laws of the United States.

Sixth. There is nothing in this record showing a conspiracy and/or an unlawful combination of any kind to violate the National Prohibition Act, and particularly the portions thereof set forth in the indictment, and/or Sections 593a and/or 593b of the Tariff Act of 1922, and/or the treaty of May, 1924, between the United States and Great Britain.

Seventh. All and each part of the evidence of overt acts were improperly admissible at the time of receipt.

Eighth. All and each part of the evidence concerning overt acts have not been nor has any part of it been connected up by laying the foundation, viz., the existence of a conspiracy.

Ninth. All and each part of the evidence concerning overt acts have not nor has any part of it been connected up by any foundation at all.

Tenth. All evidence and each part thereof introduced as a result of the seizure of the "Quadra" was illegally admitted and in contravention of the rights of these moving defendants, and each of them, under the Fourth and Fifth Amendments to the Constitution of the United States.

Eleventh. Section 37 of the Criminal Code, under which these defendants and each of them are charged has no application at the place where all acts concerning them were by them committed, at a point admittedly beyond the three-mile limit on the coast line of the United States. [609]

Twelfth. The National Prohibition Act, and particularly the parts thereof pleaded in this indictment, and the Tariff Act of 1922, and the sections pleaded in this indictment, have not nor has either of them application beyond the territorial limits of the United States, namely three miles, or a marine league from the coast line thereof.

Thirteenth. The treaty between Great Britain and the United States completely supersedes the application of the National Prohibition Act, and the sections pleaded in the indictment, and the tariff Act of 1922, and the sections pleaded in the

indictment, and each and every part of each of said acts, and under said treaty the right to arrest and/or criminally or otherwise prosecute officers and members of a ship of British registry is not given.

As to the defendant Belanger, we move, in addition to the foregoing grounds, that there is no evidence of his knowledge of any of the acts testified to having been done and performed by the "Quadra."

That there is no evidence of his participation in any of the acts testified to having been done and performed by the "Quadra."

That there is no evidence of the defendant Belanger having knowledge of the performance of any illegal act by the "Quadra."

That there is no evidence that the defendant Belanger participated in any legal act by the "Quadra."

That there is no evidence of Defendant Belanger having knowledge and/or participation in any crime or conspiracy whatsoever.

That there is no evidence of Defendant Belanger having knowedge and/or participation in the crimial offense set out or attempted to be set out in this indictment.

If the Court please, in indicating the grounds of the motion, I do not know whether I indicated that one of the grounds was that [610] the evidence was insufficient to justify and/or support a verdict; if I did not, I ask that that might be considered as one of the grounds on behalf of each and all of the defendants.

The COURT.—Before the argument goes further, Mr. Faulkner, I am not sure that your motion covers all of the defendants, does it?

Mr. FAULKNER.—My motion covers the master, officers and members of the crew of the "Quadra," which are the first 22 men named in the indictment; my motion is primarily as to them. I also addressed a motion on behalf of the defendant Belanger.

The COURT.—The motion will be denied.

Mr. FAULKNER.—Exception.

96.

The Court erred in overruling the motion of the defendant Quartararo to strike certain evidence from the files, as more fully appears as follows:

Mr. COGHLAN.—If your Honor please, the defendant Vincent Quartararo at this time desires to move to strike from the record and from the consideration of the jury certain exhibits and certain testimony relating to and affecting exemplars of hand writing offered and admitted here, together with certain packages of United States one dollar bills that are before you. I believe, as nearly as I can gather from my notes, that this motion refers primarily to exhibit 37, a photostatic copy of the articles of incorporation introduced here through the testimony of Mr. Milton M. Davis; I move that that be stricken from the record.

Exhibit 41, a photostatic copy of a receipt card of Vincent Quartararo at the Bank of Italy which came in under the testimony of E. J. Casey, if I remember right.

Also exhibit 42, which I believe consists of certain checks, [611] if I remember correctly, bearing a signature of a person named Vincent Quartararo; at any rate, it is exhibit 42, and they all bear upon the same subject.

And exhibits 39 and 40, and exhibits 38, 41, 33, 35, 36 and 31—these are all Government exhibits and they all relate to the matter to which I have called your Honor's attention. I say that so that I may intelligently refer to them.

The COURT.—Those are the different packages of bills. And also all the testimony of E. O. Heinrich offered here as an expert on handwriting affecting those exhibits. I offer that motion, your Honor, upon the ground that they have not been in any way identified with the transaction or transactions stated or pleaded in the indictment or with the conspiracy therein described, or with any conspiracy whatsoever or with any violation of the National Prohibition Act, or the Tariff Act of 1922, or with the operations of the "Quadra," evidence of which was taken here, or of the "Malahat" or any of the motor boats named in the evidence by the witnesses here or with the alleged operations of any of the witnesses who have testified, or that they were ever connected with or ever used at all on any of the criminal or alleged or claimed criminal operations contemplated by these proceedings, or that they were in any way connected with any transaction having to do with the conspiracy charged or the persons charged here in the indictment or with any other persons named

as unknown, or with the events or things here testified to by the several witnesses who touched upon those matters, or that they themselves, meaning the bills furnish any evidence of an identity of operation, that is to say, furnish any evidence that they were used in any of the operations claimed to have been criminal and here adverted to by witnesses or counsel, or that they give any evidence of belonging to any transaction having to do with any of the charges here set out in the indictment; and, furthermore, that they do give evidence [612] upon their face, in connection with other things in the record, of having to do with other and distinct and separate transactions from anything which it is claimed transpired in connection with this conspiracy; and that they do not in any way form a bridge or connection between Vincent Quartararo and the conspiracy here charged or attempted to be proved.

The COURT.—The motion is denied.

Mr. COGHLAN.—We reserve an exception.

97.

The Court erred in denying the motion of the defendant Quartararo to direct the jury to acquit said defendant, as will more fully appear, as follows:

Mr. COGHLAN.—And now I want to adopt a motion that was made by Mr. Faulkner and to add to it the observations made in my objection; I move for an instructed verdict upon the ground that Vincent Quartararo has in no way been connected with the commission of the conspiracy set

out in this indictment, or any offense punishable under this indictment.

The COURT.—Motion denied.

Mr. COGHLAN.—Exception.

98.

The Court erred in admitting in evidence certain testimony over the objection of the defendants as will more fully appear as follows:

Q. Of course, you did not have the slightest idea that she might have been a rum runner when you saw her? A. No.

Mr. GREEN.—I object to that as immaterial, irrelevant and incompetent.

The COURT.—Overruled.

Mr. GREEN.—Exception. [613]

99.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. GREEN.—Q. Mr. Harris, when you were off the coast of the United States, and particularly off the Coast of San Francisco, and took part, under the captain's orders, in assisting in the unloading of liquor into small vessels, did you know you were violating in any way any law of the United States?

Mr. GILLIS.—Just a minute. I object to the question on the ground that it is leading and suggestive, and putting the answer right into the witness' mouth. It is not proper redirect examination.

Mr. FAULKNER.—What answer is he putting in his mouth?

Mr. GILLIS.—Address your remarks to the Court.

The COURT.—It is entirely immaterial whether he knew it or not.

Mr. FAULKNER.—We submit that it is material, your Honor, in this proceeding.

The COURT.—I cannot agree with you. The objection is sustained.

Mr. GREEN.—A citizen of a foreign country is not presumed to know the law.

The COURT.—Everybody is presumed to know the law—except lawyers.

Mr. GREEN.—We take an exception to the ruling, your Honor.

100.

The Court erred in admitting in evidence certain testimony over the objection of the defendands, as will more fully appear as follows:

Q. But at the time that you participated, either directly or [614] indirectly in the unloading of part of the cargo of the "Quadra" into small boats in that position, did you know that you were in any way violating any law of the United States?

Mr. GILLIS.—The same objection to that as was made to a similar question asked the witness Harris.

The COURT.—The objection is sustained.

Mr. GREEN.—Exception.

101.

The COURT erred in admitting certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. RIORDAN.—I offer this Western Union telegram of the date indicated, May 27, 1924, for identification.

Mr. FAULKNER.—We make the same objection (immaterial, irrelevant and incompetent, and no foundation laid).

The telegrams were stipulated to be in the handwriting of Defendant Belanger, and thereupon, over objection of defendants, were read to the jury. The particular telegrams referred to are dated, respectively, May 27, and two of date May 28, all in 1924.

102.

The Court erred in admitting in evidence certain excerpts from the machinery log of the "Shawnee," as will more fully appear as follows:

Mr. GILLIS.—I ask that that part of the machinery log of the "Shawnee" for October 12, headed, "Midnight to 8 A. M.," signed by R. N. Williams, Machinist, be introduced in evidence. I ask to read it into evidence, in order that the record may not be encumbered with the whole book.

Mr. FAULKNER.—We object to that as immaterial, irrelevant and incompetent, and an effort on the part of the prosecution to impeach the testimony of a witness on a matter collateral to [615] the issue concerning which he was cross-examined. Your Honor will have in mind that the sailor from the "Shawnee" testified to the taking of a sounding in the afternoon. Matters developed on cross-examination concerning from midnight of the preceding day to 8 A. M. are collateral matters, and

the impeachment of that witness concerning them would be immaterial, irrelevant and incompetent, not proper impeachment, and an effort to impeach a man on a collateral matter.

Mr. GILLIS.—The movements of the "Shawnee" from the moment she left Drakes' Bay until the "Quadra" was seized is all part of the case.

Mr. FAULKNER.—That was not a part of the evidence of the man you are attempting to impeach.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

103.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Q. Do you know who your water-tender was?

A. I do.

Mr. GREEN.—That is objected to on the ground that it is not proper rebuttal.

The COURT.—Objection overruled.

Mr. GREEN.—Exception.

Mr. GILLIS.—Q. Who was it?

A. Schybinger.

104.

The Court erred in denying at the conclusion of the case the motion of defendants to suppress certain evidence, as more fully appears hereafter, and the motion for a directed verdict which more fully appears hereafter:

Mr. FAULKNER.—At this time, if the Court please, on behalf [616] of all the defendants, jointly and severally, I move for the suppression

of all of the exhibits, made at the time of the close of the prosecution's case. If the Court will permit it, and if agreeable to Mr. Gillis, may the motion to suppress the evidence, in which I referred to all the exhibits, be considered as renewed and made at this time?

Mr. GILLIS.—Certainly, that is perfectly agreeable.

Mr. FAULKNER.—I would like to supplement that particular motion, if the Court please. I would ask the Court at this time, both sides having rested, to exclude from the record the evidence concerning the speed of the "C–55." At the time of the admission of that evidence in the record the Court will recall a legal objection was made to its introduction. I do not desire, unless the Court desires me to, to indicate the legal proposition that was involved in that objection, which was ruled on at that time—

The COURT.—It is considered as made upon the same ground, Mr. Faulkner.

Mr. FAULKNER.—Yes, your Honor. At the time you permitted that evidence to go in, the Court indicated as follows:

"Of course, Mr. Green, that is, again, a question of the order of proof, but, of course, if it be not shown that the vessel was engaged in the business of conveying liquor there may be something to that; you can renew the objection at the proper time. For the present it is overruled."

There is nothing in this record that the "C–55"

was ever intended as a ship to convey liquor to the shores of the United States.

The only evidence in that regard is that the ship was actually taken by the "Shawnee" to the United States, and at the time of its seizure it was declared to be a ship engaged in the transfer of liquor between two vessels on the high seas. The Court [617] cannot infer, in the absence of direct evidence, against the only presumption that exists in a criminal case, the presumption of innocence, that they were engaged in a criminal enterprise as set forth in the indictment.

In addition to that, if the Court please, I desire again, on behalf of each and every defendant, jointly and severally, and the motion may be, I take it, considered to be made on behalf of each defendant individually, as well as jointly, that the Court at this time instruct the jury to acquit the defendants, each and every, all and singular the defendants present under this indictment; that motion will be based upon all of the grounds set forth in the motion for a directed verdict directed to the Court's attention at the time of the conclusion of the prosecution's case, as though I again read it in full; may that be stipulated, Mr. Gillis?

Mr. GILLIS.—Yes, certainly.

Mr. FAULKNER.—The first reason being that the evidence is insufficient as to each and every, and all and singular the defendants, jointly and severally, to warrant, or upon which the Court could base, or the jury could base, a conviction. I know with what thoroughness the Court has con-

sidered this matter at a prior time, and I think that the matter was presented with some degree of thoroughness on the part of the defendants; if the Court desires any additional thoughts that I have on the subject presented here at this time I will be pleased to do it; particularly one authority of the Supreme Court of the United States, which holds that a charge of conspiracy outside of the territorial limits of the United States cannot be had under the laws of the United States.

The COURT.—The motions are both denied.

Mr. FAULKNER.—Exception as to all the defendants, jointly [618] and severally.

105.

The Court erred in determining that the question of jurisdiction involved and the ship's position involved were questions for the Court, rather than questions for the determination of the jury, to which ruling defendants duly excepted. Reference is hereby made to the bill of exceptions for the particulars in this regard, for the reason that the discussion consumes fifteen or twenty pages, and it is respectfully requested that the entire record of the bill of exceptions be deemed a part of this assignment of error. In the Court's finding it said;

"The Court will find that the ship was seized within the limit provided by the treaty with Great Britain."

Mr. GREEN.—To which ruling we respectfully note an exception, and also to the Court's remarks.

106.

The Court erred in refusing to permit argument

on the question of the ship's position, as will more fully appear as follows:

Mr. GREEN.—Of course, your Honor has decided the question, but will you hear any argument on the question of the position of the ship?

The COURT.—I don't think I care to, Mr. Green. I am satisfied on that point.

Mr. FAULKNER.—If the argument, your Honor, were merely directed to the Government's case?

The COURT.—I understand that, Mr. Faulkner, and I have ruled on it. I don't care to hear any further argument.

Mr. FAULKNER.—Exception. [619]

107.

The Court erred in permitting the reopening of the case of the prosecution to admit in evidence the telegram in words and figures as follows:

"RUSH WIRE.

San Francisco, June 24/24.

"Geo. Norgan,
Room 1052 Biltmore Hotel,
Los Angeles, Calif.

"Merchandise not yet reached market. Therefore cannot report anything different. Stop. Have appointment with Vince to-morrow who will make proposition in morning. Things shaping good. Regards.

C. H."

over the objection of counsel for the defendants, to which reopening of the case counsel objected and

duly excepted to the Court's ruling; the objections and the dialogue consumed some ten pages of the transcript, and, therefore, reference is made to the bill of exceptions to show the transaction in this regard.

108.

The Court erred in admitting the telegram referred to in assignment 107 over the objections of the defendant, as follows:

Mr. RIORDAN.—I now offer in evidence the telegram heretofore admitted for identification.

Mr. FAULKNER.—I object to that, if the Court please, as immaterial, irrelevant and incompetent, and truly no foundation has been laid. There is no evidence whatever as to the identity of the sender of this telegram. The notation made by the young lady at the time of sending does not indicate that the person sending is the person whose name is written; it is merely the address that she wrote of some person who has not been identified. To get this telegram properly in evidence, there should be an identification of the person that sent it.

The COURT.—Objection overruled. [620]

Mr. FAULKNER.—Exception.

109.

The Court erred in overruling the renewed motions concerning the suppression of evidence and for a directed verdict, as will more fully appear, as follows:

Mr. FAULKNER.—I think it is the duty of the defendants to again renew all motions made at the original conclusion of the case by both sides. If

you will stipulate, Mr. Gillis, that the motions to suppress evidence and the motions for directed verdicts may be considered to have been again made in full form, I think that will meet our requirements.

Mr. GILLIS.—That is perfectly agreeable to the Government, and we will so stipulate.

The COURT.—Yes. Motions denied.

Mr. FAULKNER.—Exception.

Mr. COGHLAN.—An exception on behalf of all the defendants, your Honor?

The COURT.—Yes, an exception for all the defendants.

110.

The Court erred in denying defendants' and each of their motions for a new trial, to which ruling the defendants then and there duly excepted.

111.

The Court erred in denying defendants' and each of their motions in arrest of judgment, to which ruling the defendants and each of them then and there duly excepted.

112.

The Court erred in overruling the demurrer of the defendants, and each of them, to the indictment herein, to which ruling defendants, and each of them, duly excepted. [621]

113.

The Court erred in denying the motion of the defendants, and of each of them, to quash the indictment therein, to which ruling the defendants, and each of them, then and there duly excecpted.

114.

The Court erred in denying the motion of the defendants, and each of them, to suppress evidence, made by them prior to the trial, to which ruling the defendants, and each of them, then and there duly excepted.

115.

The Court erred in instructing the jury as follows:

Now, Gentlemen, these men are charged with having entered into a conspiracy to violate certain laws of the United States. One of those laws forbids the importation of liquor into the United States in the manner in which it is charged liquor was brought in here, and without payment of the duty; in other words, what is known as the Tariff Act of 1922.

The other law is commonly known as the National Prohibition Act, which prohibits the importation into this country, the sale, the possession and the transportation of intoxicating liquor fit for beverage purposes and containing more than one-half of one per cent of alcohol by volume.

To the giving of which instruction defendants, by their counsel, then and there duly excepted.

116.

The Court erred in instructing the jury as follows:

The indictment in effect charges that a certain corporation formed in a foreign country, to wit, the Dominion of Canada, entered into a plan by which liquor was to be shipped at sea ostensibly and under

the provisions of her manifest for delivery in another foreign country, to wit, Mexico. It is charged that that was a mere cloak or blind and that the real [622] intent and purpose of the shipping of the liquor by various vessels plying out of the harbor of Vancouver was to lie off the coast of the United States and to land the liquor illegally and unlawfully upon our shores.

It is then charged that in effect Captain Ford, the chief officer Mr. Harris, the second officer Mr. Evelyn, and members of the crew of the "Quadra" loaded upon that vessel a large quantity of intoxicating liquor the manifest providing that that liquor was for delivery at La Libertad; that it was the intent and purpose, however, for that ship to come as close as she dared to the coast of California and to deliver that liquor by means of small boats plying from the ship to the shore in the State of California for distribution and sale to our citizens.

It is charged that two persons residing, or at least one of them residing in the State of California and the other sojourning here, and other persons who are not brought before the court, were the means or agency by which that scheme was to be carried out to its end. In other words, that they were to provide the vessels by which the liquor was brought from the ships to the shore, and to provide for its sale and distribution after it was landed on the coast of the State of California.

Now, Gentlemen, if that be true then I instruct you that every person who in any manner participated in that scheme was guilty of the conspiracy as charged in the indictment.

To the giving of which instruction defendants by their counsel then and there duly excepted.

118.

The instructions of the Court to the jury relative to officers and members of the crew, which eliminated from consideration [623] the questions of jurisdiction, which had been thoroughly announced to the Court at various stages of the trial, were excepted to for their failure to embody the position advanced by defendants concerning the jurisdiction and the position of the "Quadra"; to the giving of which instructions defendants, by their counsel, then and there duly excepted.

119.

The Court erred in refusing the request of the defendants George Ford, George Harris, J. Evelyn and Charles Horace Belanger, and each of them, to give the following instructions, and each of them, and said defendants and each of them predicate error on the failure to give each of said instructions, and to which ruling of the Court said defendants and each of them then and there, through their counsel, duly excepted, and which instructions, for convenience, will be referred to hereafter by the numbers under which they were proposed to the Court.

INSTRUCTION No. 1.

I instruct you that the evidence in this case is insufficient to warrant a conviction of the defendant George Ford, and you are therefore instructed to return a verdict of not guilty as to the defendant George Ford.

Instruction No. 1a, Instruction No. 1b, and Instruction No. 1v were in the same form as Instruction No. 1, except that the names of defendants George Harris, J. Evelyn, and Charles Horace Belanger were substituted in the proposed instruction by them in the place of the name George Ford appearing about.

INSTRUCTION No. 33.

I charge you that the steamer "Quadra" was a private vessel under the British flag. [624]

INSTRUCTION No. 34.

I charge you that it is an admitted fact in this case that all acts and transactions on the part of the master, officers and crew of the "Quadra" were done and performed by them on the high seas at a distance from the coast of the United States, its territories and possessions greater than three miles or a marine league; therefore, your verdict in this case as against defendants, master, officers and members of the crew of the steamer "Quadra" shall be not guilty.

INSTRUCTION No. 35.

I charge you that it is an admitted fact in this case that all acts and transactions on the part of the master, officers and crew of the "Quadra" were done and performed by them on the high seas at a distance from the coast of the United States, its territories and possessions greater than three miles or a marine league; therefore, your verdict in this case as against defendant Belanger shall be not guilty.

759

INSTRUCTION No. 36.

I charge you that if you believe from the evidence in this case that the steamer "Quadra" never came within a marine league or three miles from the coast line of the United States, its territories or possessions, then your verdict as to the master, subordinate officers and members of the crew of the "Quadra" shall be not guilty.

INSTRUCTION No. 37.

I charge you that unless the Government has established to a moral certainty and beyond a reasonable doubt that the master, subordinate officers and members of the crew of the steamer "Quadra" came within three miles or a marine league of the coast of the United States, its territories and possessions at or during the time of the existence of the claimed conspiracy then your verdict as to each of said officers, members of the crew and master shall be not guilty. [625]

INSTRUCTION No. 38.

There is no evidence in this case that the "Quadra" was a vessel intended to bring liquor into the United States.

INSTRUCTION No. 39.

I therefore charge you that unless the Government has shown to a moral certainty and beyond a reasonable doubt that the steamer "Quadra" was boarded and seixed within a distance from the coast of the United States, its territories or possessions which could be traversed in one hour by some other vessel intended to convey liquor from the "Quadra"

to the United States, then your verdict as to the master, officers and members of the crew of the "Quadra" and each thereof shall be not guilty.

INSTRUCTION No. 40.

I therefore charge you that unless the Government has shown to a moral certainty and beyond a reasonable doubt that the steamer "Quadra" was boarded and seized within a distance from the coast of the United States its territories or possessions which could be traversed in one hour by some other vessel intended to convey liquor from the "Quadra" to the United States, then all evidence entroduced fendant Belanger shall be not guilty.

INSTRUCTION No. 41.

I therefore charge you that unless the Government has shown to a moral certainty and beyond a reasonable doubt that the steamer "Quadra" was boarded and seized within a distance from the coast of the United States, its territories or possessions, which could be traversed in one hour by some other vessel intended to convey liquor from the "Quadra" to the United States, then all evidence introduced in this case obtained on the "Quadra" is suppressed and you are to disregard the same as to the officers, members and master of the "Quadra." [626]

INSTRUCTION No. 42.

I therefore charge you that unless the Government has shown to a moral certainty and beyond a reasonable doubt that the steamer "Quadra" was boarded and seized within a distance from the coast of the United States, its territories or posses-

sions, which could be traversed in one hour by some other vessel intended to convey liquor from the "Quadra" to the United States, then all evidence introduced in this case obtained on the "Quadra" is suppressed, and you are to disregard the same as to the defendant Belanger.

INSTRUCTION No. 43.

I charge you that in order to find the master, officers and members of the crew of the steamer "Quadra" guilty, the Government must show to a moral certainty and beyond a reasonable doubt that the steamer "Quadra" at the time of its seizure was within an hour's sailing distance of some vessel other than the "Quadra," which was intended to convey liquor to the United States, its territories and possessions.

The burden therefore rests upon the Government to establish to a moral certainty and beyond a reasonable doubt that the "C–55" was a vessel intended to convey liquor from the "Quadra" to the United States, its territories or possessions; the Government must further establish to a moral certainty and beyond a reasonable doubt that the "C–55" could have traversed the distance between the place of seizure of the "Quadra" to the North Farallone in one hour, laden as it was and having in mind the water to be traversed and the condition of wind, weather and current.

INSTRUCTION No. 44.

I charge you that if you believe from the evidence that the "C–55" was transferring liquor from one

ship to another on the [627] high seas, your verdict as to the defendants masters and members of the crew of the "Quadra" shall be not guilty.

INSTRUCTION No. 45.

I charge you that if you believe from the evidence that the "C–55" was transferring liquor from one ship to another on the high seas, your verdict as to the defendant Belanger shall be not guilty.

INSTRUCTION No. 46.

I charge you that evidence has been adduced on behalf of the defendants that the steamer "Quadra" at the time of its seizure was more than 13 miles to the North Farallone, the nearest of the United States Possessions.

If you believe said evidence, or said evidence creates a reasonable doubt in your mind as to the position of the "Quadra," your verdict as to the master, officers and members of the "Quadra" shall be not guilty.

INSTRUCTION No. 47.

I charge you that evidence has been adduced on behalf of the defendants that the steamer "Quadra" at the time of its seizure was more than 13 miles to the North Farallone, the nearest of the United States possessions.

If you believe said evidence, or said evidence creates a reasonable doubt in your mind as to the position of the "Quadra," your verdict as to the defendant Belanger shall be not guilty.

INSTRUCTION No. 48.

I charge you that under the law, the officers sub-

ordinate to master and members of the crew of the "Quadra" were bound to obey the lawful commands of the master of said vessel.

INSTRUCTION No. 49.

There is evidence in this case that the "Quadra" delivered liquor to other vessels. I charge you that you cannot infer from [628] this evidence that all of the officers and members of the crew of the "Quadra" participated in such delivery. The burden rested upon the Government in this case to prove to a moral certainty and beyond a reasonable doubt as to each officer and as to each member of the crew that they participated in a conspiracy with knowledge thereof.

INSTRUCTION No. 50.

I charge you that unless the Government has established to a moral certainty and beyond a reasonable doubt that the acts done and performed by the members of the crew and subordinate officers of the master of the "Quadra," were done and performed with an intent to violate the laws of the United States as distinguished from obedience to the orders of the master of the "Quadra," your verdict as to the members of the crew of the "Quadra" shall be not guilty.

INSTRUCTION No. 51.

I charge you that in order to find the subordinate officers and members of the crew of the "Quadra" guilty of the offense charged in the indictment, the Government must establish to a moral certainty and beyond a reasonable doubt that

each subordinate officer and member of the crew that you find guilty actually participated in an attempt to violate the laws of the United States with knowledge at the time of participation that the laws of the United States were attempted to be violated.

INSTRUCTION No. 52.

I charge you that if you find from the evidence in this case that all acts done and performed by the officers subordinate to the master and members of the crew of the "Quadra" were done and performed by them at a point greater than three miles or a marine league from the coast of the United States, its [629] territories or possessions, your verdict as to said members of the crew and each thereof and said subordinate officers and each thereof shall be not guilty.

INSTRUCTION No. 53.

I charge you that the proof that certain of the defendants were officers and members of the crew of the "Quadra" is not, standing alone, sufficient to warrant a conviction of said defendants or either of them.

INSTRUCTION No. 54.

I charge you that each member of the crew and each officer of the "Quadra" is entitled to have the evidence against him weighed and determined under the rules laid down by the instructions given and to be given by the Court.

INSTRUCTION No. 55.

With respect to the officers and members of the

crew of the "Quadra" and each thereof, I charge you that participation in an act a part of a conspiracy, without knowledge of its existence, or knowledge of the conspiracy without participation therein, is not sufficient to warrant a conviction.

INSTRUCTION No. 56.

I charge you that if you find from the evidence in this case that any defendants members of the crew and officers subordinate to the master of the "Quadra" participated in delivering and unloading liquor from the steamer "Quadra," to other vessels pursuant to the orders of the master at a point more than a marine league or three miles from the United States, its territories or possession, and said members of officers and crew or either of them, did not have knowledge that said "Quadra" was within an hour's sailing distance of the vessels with which it was dealing from the coast line of the United States, its territories or possessions, and did not have an intent to [630] violate any law of the United States, I charge you that your verdict as to such officers and members of the crew and each thereof shall be not guilty.

INSTRUCTION No. 57.

I have instructed you as to the facts which the Government must establish as to a moral certainty and beyond a reasonable doubt in order to find the members of the crew and officers of the steamer "Quadra" guilty. I further charge you in this connection that every fact which I have instructed you that you must find, you must find as to each

member of the crew and as to each officer of the steamer "Quadra."

INSTRUCTION No. 58.

I charge you that the only evidence in this case connecting defendant Belanger with the commission of the offense charged in the testimony of accomplices.

INSTRUCTION No. 59.

I charge you that you should exercise care and caution in viewing the testimony of accomplices and that before a conviction be based thereon, such testimony should be convincing proof of the guilt of the accused.

INSTRUCTION No. 60.

In considering the testimony of accomplices I caution you about accepting such evidence without material corroboration, coming as it does from a polluted source.

INSTRUCTION No. 61.

A witness false in one part of his testimony is to be distrusted in others; that is to say, you may reject the whole of the testimony of a witness who has willfully sworn falsely as to a material point.

INSTRUCTION No. 64.

I charge you that unless you find from the evidence that [631] the subordinate officers and members of the crew of the "Quadra" at the time of the signing of the ship's articles or before the actual embarkation of the "Quadra" on the voyage indicated in the evidence, had knowledge that it

was the purpose of the voyage to unload the cargo contained in the "Quadra" at a place other than its apparent designation, your verdict as to each of said subordinate officers and members of the crew of the "Quadra," shall be not guilty.

INSTRUCTION No. 65.

I charge you that if the acts and conduct of the master, subordinate officers and members of the crew of the "Quadra," or as to them or either of them, as consistent with their innocence of the offense charged in the indictment as with their guilt, then it is your bounden duty to acquit said defendants and all of them, or either of them, as to whom you shall so find.

INSTRUCTION No. 66.

I charge you that if the acts and conduct of the defendant Belanger depicted in the record is as consistent with the innocence of said defendant Belanger, as to the offense charged in the indictment as with his guilt, it is your duty to acquit the said defendant Belanger.

INSTRUCTION No. 67.

I charge you that if you believe from the evidence in this case that the subordinate officers and members of the crew of the "Quadra" were not conscious participants in this alleged conspiracy, if it was a conspiracy, then you must return a verdict of not guilty as to said subordinate officers and members of the crew of the "Quadra."

INSTRUCTION No. 68.

I charge you that if you believe from the evidence

in this [632] case that the subordinate officers and members of the crew of the "Quadra," acting in good faith, supposed that the "Quadra" was going to Mexico and not to this country, then they ought not to be convicted.

INSTRUCTION No. 69.

I charge you that the subordinate officers and members of the crew of the "Quadra" were mere servants or employees of the boat and that their acts should be considered by this jury, keeping that fact in view, and if you do not believe beyond a reasonable doubt, that they were conscious participants in the conspiracy, if there was one, then you ought to acquit them.

INSTRUCTION No. 70.

If you find from the evidence that the acts or any one of them charged by the Government in the indictment, or shown by the evidence, to have been committed by the defendants comprising the subordinate officers and members of the crew of the "Quadra" were committed by said defendants and were so committed and performed by said defendants, solely and simply as employees, servants, or agents or other persons and were performed by said subordinate officers and members of the crew without any common design, purpose or understanding on the part of said subordinate officers and members of the crew with any other persons charged in said indictment, then I instruct you that the said defendants, subordinate officers and members of the crew of the "Quadra," cannot be considered conspirators and must be acquited.

INSTRUCTION No. 71.

I charge you that where it is within the power of a party to produce a witness and such a witness is not produced, a presumption arises that the testimony of such witness not produced but available would be adverse to the party failing to produce the witness. [633]

INSTRUCTION No. 72.

If you believe from the evidence in this case that defendant Ford, Master of the "Quadra" delivered liquor to other persons with the belief at the time that the delivery by him and that all of his acts and conduct in connection therewith were without intent on his part to violate any law of the United States, and that he was of the belief that his acts and conduct were legal at the time of the performance by him, then I instruct you that as to said defendant Ford, master of the "Quadra," your verdict shall be "not guilty."

Defendant Quartararo requested the Court to give his proposed instructions numbered as hereinafter indicated, which instructions the Court refused to give, and to the refusal by the Court to give said instructions said defendant Vincent Quartararo, through his counsel, then and there duly excepted.

INSTRUCTION X.

The Court instructs the jury that Exhibits 30, 31, 32, 33, 34, 35, 36, 37, which consist of certain dollar bills heretofore allowed in evidence are in no way to be considered in this case, and that the same are to be entirely ignored in arriving at a verdict

in this case. You also are instructed to disregard utterly Government's Exhibits 38, 39, 40, 41, 42, and 43, which contain certain exemplars of handwriting.

Furthermore you are instructed to utterly disregard and refrain from the consideration of the testimony of E. O. Heinrich in so far as it touches said or any of said exhibits.

INSTRUCTION A.

You are instructed that if from the evidence you are convinced beyond a reasonable doubt that any one or more of these defendants knew of the existence of the conspiracy charged in [634] the indictment and yet you entertain a reasonable doubt as to whether such defendant or defendants took part in said conspiracy, you must find such defendant or defendants not guilty.

INSTRUCTION B.

You are instructed that the mere fact that certain of these defendants were or may have been acquainted with each other or may have associated together is not in itself sufficient upon which to find a verdict against them or any of them.

INSTRUCTION C.

You are instructed that you cannot convict any of these defendants merely because the evidence in this case may convince (if it should convince) you that the defendants, or some of them are guilty of a conspiracy, other than the one charged in the indictment.

INSTRUCTION E.

The Court instructs the jury, that you are not in this case trying these defendants for the violation of the "National Prohibition Act," nor are you trying them for an infraction of law of the United States known as the "Tariff Act of 1922." You are sworn to the contrary, to try these defendants solely upon the charge of conspiracy, as alleged in the indictment. And in this connection you are instructed that unless you are convinced beyond any reasonable doubt that the defendants or some of them are guilty of the particular conspiracy to which the indictment refers—you cannot find them guilty even though you may be convinced beyond a reasonable doubt that they are guilty of another or any number of other crimes.

INSTRUCTION F.

You are instructed that even though you believe from the evidence that the conspiracy charged in the indictment existed as therein alleged, and are convinced that some one of the defendants [635] in violation of the National Prohibition Act purchased from some one or more members of such conspiracy and transported the same—certain intoxicating liquor—yet if you entertain a reasonable doubt as to whether such defendant took part in said conspiracy—you must find him not guilty.

INSTRUCTION G.

You are instructed that it is the law by which you are sworn to abide, that if after reviewing all of the facts that have been adduced at this trial

you discover that there are two possible interpretations of these facts, the one of which is entirely consistent with the guilt of the defendant and the other of which is consistent with his innocence, it then becomes your bounden duty to lay that interpretation upon the facts which is consistent with the innocence of the defendant, and accordingly find him not guilty.

INSTRUCTION H.

I instruct you that it is the law that the degree when accused of crime, has a perfect right to stand mute, and that the law draws no adverse imputation from such conduct.

INSTRUCTION I.

I instruct you that it is the law that the degree of proof necessary to establish the guilt of the defendant is more or greater than the degree of proof sufficient to acquit him. In the first instance, the Government must prove to a moral certainty and beyond a reasonable doubt that the defendant is guilty of the offense charged, before you can convict him. In the case of the defendant, however, the degree of proof required on his part is merely such as to raise in your minds a reasonable doubt as to his guilt, and in that case it is your duty to acquit him. [636]

INSTRUCTION J.

The Court instructs the jury that the prosecution in this case have offered the testimony of two persons, namely, Sam Crivello and Marina Crivello, who have pleaded guilty to the crime set forth in

the indictment, you are to review the testimony of these two persons with caution and to weigh their testimony in the light of the fact that they are here testifying as admitted accomplices. You ought not in other words give the same degree of credit to the testimony of such witnesses as you would to the testimony of witnesses who are not accomplices and who have not been impeached. I further charge you in this connection, that if you believe after a careful review of their testimony that the accomplices named have wilfully testified falsely to any material fact in this case you may absolutely discard and disregard their testimony.

INSTRUCTION K.

The Court instructs the jury that certain testimony has been offered here by the Government to the effect that one of these defendants, Vincent Quartararo was present and received from the witness Sam Crivello certain deliveries of illicit liquor at certain times and places. In this connection the said defendant has offered testimony having for its purpose proof that he was not present at the times and places referred to by said witness. In this connection I charge you that if such testimony, or any other evidence which has been here adduced, raises in your mind a reasonable doubt as to whether Vincent Quartararo was present at said times and places it becomes your duty to resolve that doubt favorably to the defendant Vincent Quartararo. [637]

INSTRUCTION L.

You are instructed that it is the duty and sole

province of the jury to say whether or not any fact has been proven or not proven and no witness whether he is an expert witness or not, can decide for you what facts have been here established.

INSTRUCTION M.

You are instructed that all questions concerning the identity of handwriting are to be decided exclusively by the jury. You are not bound to follow the opinion of any expert witness if your opinion runs counter to that of such expert witnesses. All questions affecting similarity or dissimilarity of handwriting are to be finally decided by you and by no one else.

INSTRUCTION N.

The Court instructs the jury that it is the positive right and privilege of any one of the defendants here on trial to either take the witness-stand or to refrain from testifying in this case, and as to any defendant who may have not taken the witness-stand, I charge you that the fact that he has not offered himself as a witness is not to be considered by you in any respect in arriving at a verdict in this case. Nor are you to draw any inference adverse to or against any such defendant by reason of the fact that he may not have taken the witness-stand in this case.

INSTRUCTION O.

You are instructed that it is the bounden duty of the prosecution to prove every essential and material fact in this case by more than a preponderance or greater weight of testimony. In a civil

case it is only necessary that a fact on either side be established by a mere preponderance or greater weight of evidence, but in a criminal case it is the law that the prosecution [638] must actually prove every material fact to the entire satisfaction of the jury beyond any reasonable doubt. On the other hand, if you find that the defense in this case has offered evidence of any facts having a tendency to disprove facts advanced by the prosecution, or having a tendency to establish the innocence of the defendant, it is not necessary that the defense prove any facts beyond a reasonable doubt. It is only necessary in any case that the evidence advanced by the defense raise in the mind of the jury or any juror a reasonable doubt and in no case is it necessary that the defendants prove a fact by more than a mere preponderance or greater weight of the testimony.

INSTRUCTION P.

You are further instructed that you cannot convict any of the defendants upon a mere suspicion or upon the mere fact that the probability of their guilt may be greater than the probability of their innocence. The prosecution are bound to establish their guilt beyond all reasonable doubt, and unless they do so you cannot convict them, however strong a suspicion of their guilt you may have in your mind, or however probable their guilt may seem, but it is your duty, under such circumstances to find them not guilty.

INSTRUCTION Q.

You are instructed that the jury in this case are

the sole judges of the facts here offered and you alone are the judges of the credibility of the witnesses who may have testified here. It is your privilege and duty under the law in weighing and considering the credibility of such witnesses to observe and note their conduct upon the witness-stand, the manner in which they have testified and deported themselves, whether or not they are persons who entertain any animus or feeling towards or against the defendants and whether or not their testimony is in [639] any way influenced or colored by any feeling which they may entertain in this case or any interest they may have in the result thereof. If you believe upon hearing the testimony of any of the witnesses that his evidence has been influenced or colored by anything except a desire to testify to the truth, it is your duty to judge of his testimony accordingly and to give it such weight as you deem the testimony of an interested person to be entitled to in this case.

INSTRUCTION R.

The Court instructs the jury that it is the law, by which we are bound in this proceeding, that you and you alone are the judges of the facts in this case, and that your conscientious conclusions upon the facts together with the law wherever you find it applicable to such facts, must alone guide you in arriving at a verdict.

INSTRUCTION S.

You are instructed that it is for you to say whether any fact has been proven or not proven.

And no witness, whether he is an expert witness or not, can decide for you what facts have been here established.

INSTRUCTION T.

You are instructed that the testimony of expert witnesses is to be received by you with great caution.

INSTRUCTION U.

You are instructed that the mere fact that a defendant may have been in a position where he had an opportunity to commit the offense which is here charged against him is not sufficient upon which to find a verdict against him.

INSTRUCTION V.

You are instructed that it is your privilege and duty in weighing the testimony of the witnesses to ascertain for yourselves [640] how much credit should be given to statements made by each and every witness and if you find that any witness has wilfully testified falsely as to any one material matter, you may distrust and discard all of the testimony of that witness.

WHEREFORE, for the Many Manifest Errors committed by said Court, the defendants, through their attorneys, pray that said sentence and judgment of conviction be reversed; and for such other

and further relief as to the Court may seem meet and proper.

KENNETH M. GREEN,
HAROLD C. FAULKNER,

Attorneys for Defendants George Ford, George Harris, J. Evelyn, and Charles Horace Belanger.

NATHAN C. COGHLAN,

Attorney for Defendant, Vincent Quartararo.

Dated at San Francisco, April 10th, 1925.

Receipt of a copy of the within assignment of errors is hereby admitted this 10th day of April, 1925.

STERLING CARR,
United States Attorney.

[Endorsed]: Filed Apr. 10, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [641]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEO. FORD et al.,
Defendants.

ORDER ALLOWING WRIT OF ERROR AND SUPERSEDEAS.

Upon motion of the attorneys of defendant, Charles H. Belanger, and upon the filing of petition for a writ of error and the assignment of errors herein, it is hereby,

ORDERED, that a writ of error be and the same is hereby allowed to have reviewed in the United States Circuit Court of Appeals, in and for the Ninth Circuit, the judgment heretofore entered against said defendant, and that the clerk of this court transmit to the clerk of the United States Circuit Court of Appeals, in and for the Ninth Circuit, a full, true and correct transcript of all records and proceedings in the above-entitled cause, and that defendant, Charles H. Belanger, be admitted to bail pending the hearing of said writ, in the sum of $20,000.00.

The bond for costs upon said writ of error is hereby fixed in the sum of $250.00.

It is further ORDERED, that the assignment of errors filed jointly and severally on behalf of defendants, Charles H. Belanger, Vincent Quartararo, Geo. Ford, J. Evelyn and Geo. Harris, be and the same is hereby made the assignment of errors on behalf of the defendant, Charles H. Belanger. [642]

Dated: April 10, 1925.

JOHN S. PARTRIDGE,
United States District Judge.

[Endorsed]: Filed Apr. 10, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [643]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEO. FORD et al.,

Defendants.

ORDER ALLOWING WRIT OF ERROR AND SUPERSEDEAS (VINCENT QUARTARARO).

Upon motion of the attorney of Vincent Quartararo, and upon the filing of petition for a writ of error and the assignment of errors herein, it is hereby,

ORDERED, that a writ of error be and the same is hereby allowed to have reviewed in the United States Circuit Court of Appeals, in and for the Ninth Circuit, the judgment heretofore entered against said defendant, and that the clerk of this court transmit to the clerk of the United States Circuit Court of Appeals, in and for the Ninth Circuit, a full, true and correct transcript of all records and proceedings in the above-entitled cause,

and that defendant, Vincent Quartararo, be admitted to bail pending the hearing of said writ, in the sum of $20,000.00.

The bond for costs upon said writ of error is hereby fixed in the sum of $250.00.

It is further, ORDERED, that the assignment of errors filed jointly and severally on behalf of defendants Charles H. Belanger, Vincent Quartararo, Geo. *Frod,* J. Evelyn and Geo. Harris, be and the same is hereby made the assignment of errors on behalf of the defendant, Vincent Quartararo. [644]

Dated: April 10, 1925.

JOHN S. PARTRIDGE,
United States District Judge.

[Endorsed]: Filed Apr. 10, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [645]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEO. FORD et al.,
Defendants.

ORDER ALLOWING WRIT OF ERROR AND SUPERSEDEAS (GEO. FORD, J. EVELYN AND GEO. HARRIS).

Upon motion of the attorneys of Geo. Ford, J. Evelyn and Geo. Harris, and upon the filing of petition for a writ of error and the assignment of errors herein, it is hereby,

ORDERED, that a writ of error be and the same is hereby allowed to have reviewed in the United States Circuit Court of Appeals, in and for the Ninth Circuit, the judgment heretofore entered against said defendant, and that the clerk of this court transmit to the clerk of the United States Circuit Court of Appeals, in and for the Ninth Circuit, a full, true and correct transcript of all records and proceedings in the above-entitled cause, and that defendants, Geo. Ford, J. Evelyn and Geo. Harris, be admitted to bail pending the hearing of said writ, in the sum of, Geo. Ford, $20,000.00; Geo. Harris, $15,000.00; & J. Evelyn, $10,000.00.

The bond for costs upon said writ of error is hereby fixed in the sum of $250.00.

It is further, ORDERED, that the assignment of errors filed jointly and severally on behalf of defendants, Charles H. Belanger, Vincent Wuartararo, Geo. Ford, J. Evelyn and Geo. Harris, be and the same is hereby made the assignment of errors on behalf of the defendants, [646] Geo. Ford, J. Evelyn and Geo. Harris.

Dated: April 10, 1925.

JOHN S. PARTRIDGE,
United States District Judge.

[Endorsed]: Filed Apr. 10, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [647]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE FORD et al.,

Defendants.

BOND OF COSTS (CHARLES H. BELANGER).

KNOW ALL MEN BY THESE PRESENTS: That Charles H. Belanger, as principal and Liberty bonds numbers, —— deposited by C. S. Arnold in the full and just sum of Two Hundred Fifty & no/100 Dollars ($250.00) to be paid to the said United States of America, its certain attorney, executors, administrators or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with out seals and dated this 10th day of

April, in the year of our Lord one thousand nine hundred and twenty-five.

WHEREAS, lately at a district Court of the United States for the Northern District of California, in a suit pending in said court, between the United States of America, as plaintiff and Charles H. Belanger, as defendant, a judgment was rendered against the said Charles H. Belanger and the said Charles H. Belanger having obtained from said court a writ of error to reverse the judgment in said court and a citation directed to the said United States of America, citing and admonishing it to be and appear at a United [648] States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California;

NOW, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH,

That if the said Charles H. Belanger, shall prosecute his writ of error to effect, and answer all damages and costs if he fails to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

CHARLES H. BELANGER.
C. S. ARNOLD.

Acknowledged before me the day and year first above written.

[Seal] THOMAS E. HAYDEN,
United States Commissioner, for the Northern District of California.

[Endorsed]: Filed Apr. 11, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [649]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE FORD et al.,

Defendants.

BOND OF COSTS (J. EVELYN).

KNOW ALL MEN BY THESE PRESENTS: That J. Evelyn, as principal and Liberty bonds numbers, ——, deposited by C. S. Arnold in the full and just sum of Two Hundred Fifty Dollars ($250.00) to be paid to the said United States of America, its certain attorney, executors, administrators or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 16th day of April in the year of our Lord one thousand nine hundred and twenty-five.

WHEREAS, lately at a District Court of the United States for the Northern District of California, in a suit pending in said court, between the United States of America, as plaintiff and J. Evelyn, as defendant, a judgment was rendered against the said J. Evelyn and the said J. Evelyn

having obtained from said court a writ of error to reverse the judgment in said court and a citation directed to the said United States of America, citing and admonishing it to be and appear at a United [650] States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California;

NOW, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH,

That if the said J. Evelyn, shall prosecute his writ of error to effect, and answer all damages and costs if he fails to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

J. EVELYN.
C. S. ARNOLD.

Acknowledged before me the day and year first above written.

[Seal] THOMAS E. HAYDEN,
United States Commissioner, for the Northern District of California.

[Endorsed]: Filed Apr. 16, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [651]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE FORD et al.,

Defendants.

BOND OF COSTS (GEORGE FORD).

KNOW ALL MEN BY THESE PRESENTS: That George Ford, as principal and Liberty bonds numbers, ——, deposited by C. S. Arnold in the full and just sum of Two Hundred & Fifty Dollars ($250.00) to be paid to the said United States of America, its certain attorney, executors, administrators or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with out seals and dated this 10th day of April, in the year of our Lord one thousand nine hundred and twenty-five.

WHEREAS, lately at a District Court of the United States for the Northern District of California, in a suit pending in said court, between the United States of America, as plaintiff and George Ford, as defendant, a judgment was rendered

against the said George Ford and the said George Ford having obtained from said court a writ of error to reverse the judgment in said court and a citation directed to the said United States of America, citing and admonishing it to be and appear at a United [652] States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California;

NOW, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH,

That if the said George Ford, shall prosecute his writ of error to effect, and answer all damages and costs if he fails to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

GEO. FORD.
C. S. ARNOLD.

Acknowledged before me the day and year first above written.

[Seal] THOMAS E. HAYDEN,
United States Commissioner, for the Northern District of California.

[Endorsed] Filed Apr. 11, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [653]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE FORD et al.,

Defendants.

BOND OF COSTS (GEORGE HARRIS).

KNOW ALL MEN BY THESE PRESENTS: That George Harris, as principal and Liberty bonds numbers, ——, deposited by C. S. Arnold in the full and just sum of Two Hundred Fifty Dollars ($250.00) to be paid to the said United States of America, its certain attorney, executors, administrators or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 16th day of April, in the year of our Lord one thousand nine hundred and twenty-five.

WHEREAS, lately at a District Court of the United States for the Northern District of California, in a suit pending in said court, between the United States of America, as plaintiff and George Harris as defendant, a judgment was rendered against the said George Harris and the said George

Harris having obtained from said court a writ of error to reverse the judgment in said court and a citation directed to the said United States of America, citing and admonishing it to be and appear at a United [654] States Circuit Court of Appeals for the Ninth Circuit to be holden at San Francisco, in the State of California;

NOW, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH,

That if the said George Harris, shall prosecute his writ of error to effect, and answer all damages and costs if he fails to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

GEORGE HARRIS.
C. S. ARNOLD.

Acknowledged before me the day and year first above written.

[Seal] THOMAS E. HAYDEN,
United States Commissioner, for the Northern District of California.

[Endorsed]: Filed Apr. 16, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [655]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE FORD et al.,

Defendants.

BOND OF COSTS (VINCENT QUARTARARO).

KNOW ALL MEN BY THESE PRESENTS: That Vincent Quartararo, as principal and Liberty bonds numbers, G-02176507-c, Amt. One 50— deposited by George Solomon in the full and just sum of Two Hundred Fifty & No/100 Dollars ($250.00) to be paid to the said United States of America, its certain attorney, executors, administrators or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 10th day of April, in the year of our Lord one thousand nine hundred and twenty-five.

WHEREAS, lately at a district Court of the United States for the Northern District of California, in a suit pending in said court, between the United States of America, as plaintiff and Vincent Quartararo as defendant, a judgment was rendered

against the said Vincent Quartararo and the said Vincent Quartararo having obtained from said court a writ of error to reverse the judgment in said court and a citation directed to the said United States of America, citing and admonishing it to be and appear at a United [656] States Circuit Court of Appeals for the Ninth Circuit to be holden at San Francisco, in the State of California;

NOW, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH,

That if the said Vincent Quartararo, shall prosecute his writ of error to effect, and answer all damages and costs if he fails to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

VINCENT QUARTARARO.
GEORGE SOLOMON.

Acknowledged before me the day and year first above written.

[Seal] THOMAS E. HAYDEN,
United States Commissioner, for the Northern District of California.

[Endorsed]: Filed Apr. 11, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [657]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEO. FORD et al.,

Defendants.

SUPERSEDEAS BOND OF GEORGE FORD.

KNOW ALL MEN BY THESE PRESENTS: That George Ford of the city of Vancouver, Province of British Columbia, Dominion of Canada, as principal, and Liberty Bonds No. D.-00063294-c-1-60 A-00003951-c-1-60—10,000 each—Dep. by C. S. Arnold in lieu of sureties in the par value of $20,000.00 is firmly bound and held unto the United States of America in the penal sum of $20,000.00 lawful money of the United States to be paid to the United States of America to which payment well and truly to be made the said George Ford principal and depositor of said above described Liberty bonds in lieu of surety, does hereby bind himself, his heirs executors and administrators, by these presents.

Sealed with his hand and seal this 10th day of April, 1925.

WHEREAS, at the term of the Southern Division of the United States District Court for the

Northern District of California, First Division, in a suit pending in the said court between the United States and George Ford et al., numbered 15,914, in the records of the said court, a judgment [658] and sentence was made, given, rendered and entered against the defendant George Ford in said suit numbered 15,914 as aforesaid, and the said George Ford having obtained a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment and sentence made and entered in said suit and the citation directed to the United States of America, to be and appear in the said United States Circuit Court of Appeals, for the Ninth Circuit at San Francisco, pursuant to the terms and at the time fixed in said citation.

NOW, the condition of the above obligation is such that if the said George Ford shall appear either in person or by attorney in the United States Circuit Court for the Ninth Circuit on such day or days as may be appointed for the hearing of said cause in said court and prosecute said writ of error and if the said George Ford shall abide by and obey all orders made by the United States Circuit Court of Appeals for the Ninth Circuit in the said cause, and the said George Ford shall not without permission leave the jurisdiction of the last-named court, and shall surrender himself in execution of said judgment and sentence as said Court may direct, if the judgment and sentence shall be affirmed, or the said writ of error dismissed, and if he shall appear for trial in the Northern District of California, on such day or days as may be appointed

for retrial of said cause by said court and to abide the judgment of said Court in the event said judgment and sentence against him shall be reversed by the United States Circuit Court of Appeals for the Ninth Circuit, then the above obligation to be void, otherwise, to remain in full force, virtue and effect. [659]

AND WHEREAS, under the provisions of Section 1320a of the United States Revenue Act, approved February 24, 1919, the undersigned has deposited with United States Commissioner for the Northern District of California at San Francisco the official having authority to take and to approve this penal bond, in lieu of surety or sureties, the said Liberty Bonds,

AND WHEREAS, the above described United States Liberty Bonds are deposited upon the condition and agreement herein given and made that said United States Commissioner shall be and he is hereby authorized and empowered to collect or to sell the above-described bonds so deposited in case of any default in the performance of any of the conditions or stipulations of such penal bond. Such power to sell or to collect such bonds shall extend to his successor in office.

GEORGE FORD,
Dep. by C. S. Arnold.

Signed, sealed and acknowledged before me this 10th day of April, 1925.

[Seal] THOMAS E. HAYDEN,
United States Commissioner for the Northern District of California at San Francisco.

Approved as to form.

THOS. J. RIORDAN,
Asst. United States Attorney.

[Endorsed]: Filed Apr. 11, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [660]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEO. FORD et al.,
Defendants.

SUPERSEDEAS BOND OF J. EVELYN.

KNOW ALL MEN BY THESE PRESENTS: That J. Evelyn of the city of Vancouver, Province of British Columbia, Dominion of Canada, as principal, and Liberty Bonds No. C-00021738-C-14-49—$5000 — C-00037498-C-14-49—$5000 — in lieu of sureties in the par value of $10,000.00 is firmly bound and held unto the United States of America in the penal sum of $10,000.00 lawful money of the United States to be paid to the United States of America to which payment well and truly to be made the said J. Evelyn principal and depositor of said above described liberty bonds in lieu of surety, does

hereby bind himself, his heirs, executors and administrators, by these presents.

Sealed with his hand and seal this 16th day of April, 1925.

WHEREAS, at the term of the Southern Division of the United States District Court for the Northern District of California, First Division, in a suit pending in the said Court between the United States and Geo. Ford et al., numbered 15,914, in the records of the said Court, a judgment [661] and sentence was made, given, rendered and entered against the defendant J. Evelyn, in said suit numbered 15, 914 as aforesaid, and the said J. Evelyn, having obtained a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment and sentence made and entered in said suit and the citation directed to the United States of America, to be and appear in the said United States Circuit Court of Appeals, for the Ninth Circuit at San Francisco, pursuant to the terms and at the time fixed in said citation.

NOW, the condition of the above obligation is such that if the said J. Evelyn shall appear either in person or by attorney in the United States Circuit Court for the Ninth Circuit on such day or days as may be appointed for the hearing of said cause in said Court and prosecute said writ of error and if the said J. Evelyn shall abide by and obey all orders made by the United States Circuit Court of Appeals for the Ninth Circuit in the said cause, and the said J. Evelyn shall not without permission leave the jurisdiction of the last named Court, and shall

surrender himself in execution of said judgment and sentence as said Court may direct, if the judgment and sentence shall be affirmed, or the said writ of error dismissed, and if he shall appear for trial in the Northern District of California, on such day or days as may be appointed for retrial of said cause by said court and to abide the judgment of said court in the event said judgment and sentence against him shall be reversed by the United States Circuit Court of Appeals for the Ninth Circuit, then the above obligation to be void, otherwise, to remain in full force, virtue and effect. [662]

AND WHEREAS, under the provisions of Section 1320a of the United States Revenue Act, approved February 24, 1919, the undersigned has deposited with Thomas E. Hayden, United States Commissioner for the Northern District of California at San Francisco, the official having authority to take and to approve this penal bond, in lieu of surety or sureties, the said Liberty Bonds,

AND WHEREAS, the above described United States Liberty Bonds are deposited upon the condition and agreement herein given and made that said United States Commissioner shall be and he is hereby authorized and empowered to collect or to sell the above-described bonds so deposited in case of any default in the performance of any of the conditions or stipulations of such penal bond. Such power to sell or to collect such bonds shall extend to his successor in office.

J. EVELYN.

Signed, sealed and acknowledged before me this 16th day of April, 1925.

[Seal] THOMAS E. HAYDEN,
United States Commissioner for the Northern District of California at San Francisco.

Approved as to form.

THOS. J. RIORDAN.

[Endorsed]: Filed Apr. 16, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [663]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEO. FORD et al.,
Defendants.

SUPERSEDEAS BOND OF GEORGE HARRIS.

KNOW ALL MEN BY THESE PRESENTS: That George Harris, of the city of Vancouver, Province of British Columbia, Dominion of Canada, as principal, and Liberty Bonds No. A–00020036–C–14–49, $5000.00—B–00020057–C–14–49, $5000.00—D–00021639–C–14–49, $5000.00—in lieu of sureties in the par value of $15,000.00 is firmly bound and held unto the United States of America in the penal sum of $15,000.00 lawful money of the United

States to be paid to the United States of America to which payment well and truly to be made the said George Harris, principal and depositor of said above-described liberty bonds in lieu of surety, does hereby bind himself, his heirs, executors and administrators, by these presents.

Sealed with his hand and seal this 16th day of April, 1925.

WHEREAS, at the term of the Southern Division of the United States District Court for the Northern District of California, First Division, in a suit pending in the said Court between the United States and Geo. Ford et al., numbered 15,914, in the records of the said Court, a judgment [664] and sentence was made, given, rendered and entered against the defendant George Harris in said suit numbered 15,914 as aforesaid, and the said George Harris having obtained a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment and sentence made and entered in said suit and the citation directed to the United States of America, to be and appear in the said United States Circuit Court of Appeals, for the Ninth Circuit at San Francisco, pursuant to the terms and at the time fixed in said citation.

NOW, the condition of the above obligation is such that if the said George Harris shall appear either in person or by attorney in the United States Circuit Court for the Ninth Circuit on such day or days as may be appointed for the hearing of said cause in said Court and prosecute said writ of error and if the said George Harris shall abide by and

obey all orders made by the United States Circuit Court of Appeals for the Ninth Circuit in the said cause, and the said George Harris shall not without permission leave the jurisdiction of the last-named Court, and shall surrender himself in execution of said judgment and sentence as said Court may direct, if the judgment and sentence shall be affirmed, or the said writ of error dismissed, and if he shall appear for trial in the Northern District of California, on such day or days as may be appointed for retrial of said cause by said court and to abide the judgment of said court in the event said judgment and sentence against him shall be reversed by the United States Circuit Court of Appeals for the Ninth Circuit, then the above obligation to be void, otherwise, to remain in full force, virtue and effect. [665]

AND WHEREAS, under the provisions of Section 1320a of the United States Revenue Act, approved February 24, 1919, the undersigned has deposited with Thomas E. Hayden, United States Commissioner for the Northern District of California at San Francisco, the official having authority to take and to approve this penal bond, in lieu of surety or sureties, the said Liberty Bonds,

AND WHEREAS, the above-described United States Liberty Bonds are deposited upon the condition and agreement herein given and made that said United States Commissioner shall be and he is hereby authorized and empowered to collect or to sell the above-described bonds so deposited in case of any default in the performance of any of the

conditions or stipulations of such penal bond. Such power to sell or to collect such bonds shall extend to his successor in office.

GEORGE HARRIS.

Signed, sealed and acknowledged before me this 16th day of April, 1925.

[Seal] THOMAS E. HAYDEN,

United States Commissioner for the Northern District of California at San Francisco.

Approved as to form.

THOS. J. RIORDAN.

[Endorsed]: Filed Apr. 16, 1925. Walter B. Maling Clerk. By C. W. Calbreath, Deputy Clerk. [666]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEO. FORD, et al.,

Defendants.

SUPERSEDEAS BOND OF VINCENT QUARTARARO.

KNOW ALL MEN BY THESE PRESENTS: That we Vincent Quartararo as principal, and August A. Bertrand and George Soloman, Helena

Soloman as sureties, are held and firmly bound unto the *the* United States of America, in the sum of Twenty Thousand Dollars, to be paid to the said United States of America, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally by these presents. SEALED with our seals and dated the 8th day of May, in the year of our Lord, one thousand nine hundred and twenty-five:

WHEREAS, at the term of the Southern Division of the United States District Court for the Northern District of California, First Division, in a suit pending in the said Court between the United States and Geo. Ford et al., numbered 15,914, in the records of the said Court, a judgment and sentence was made, given, rendered and entered against the defendant Vincent Quartararo in said suit numbered 15,914 as aforesaid, and the said Vincent Quartararo, having obtained a writ of error to the United States Circuit Court [667] of Appeals for the Ninth Circuit to reverse the judgment and sentence made and entered in said suit and the citation directed to the United States of America, to be and appear in the said United States Circuit Court of Appeals, for the Ninth Circuit at San Francisco, pursuant to the terms and at the time fixed in said citation.

NOW, the condition of the above obligation is such that if the said Vincent Quartararo shall appear either in person or by attorney in the United States Circuit Court for the Ninth Circuit on such

day or days as may be appointed for the hearing of said cause in said Court and prosecute said writ of error and if the said Vincent Quartararo shall abide by and obey all orders made by the United States Circuit Court of Appeals for the Ninth Circuit in the said cause, and the said Vincent Quartararo shall not without permission leave the jurisdiction of the last-named court, and shall surrender himself in execution of said judgment and sentence as said court may direct, if the judgment and sentence shall be affirmed, or the said writ of error dismissed, and if he shall appear for trial in the Northern District of California, on such day or days as may be appointed for retrial of said cause by said court and to abide the judgment of said court in the event said judgment and sentence against him shall be reversed by the United States Circuit Court of Appeals for the Ninth Circuit, then the above obligation to be void, otherwise, to remain in full force, virtue and effect.

VINCENT QUARTARARO.
AUGUST A. BERTRAND.
GEORGE SOLOMON.
HELENA SOLOMON. [668]

Signed, sealed and acknowledged before me this 8th day of May, 1925.

[Seal] THOMAS E. HAYDEN,
U. S. Commissioner Northern District of California at S. F.

United States of America,
Northern District of California,—ss.

August A. Bertrand, whose name is subscribed to the foregoing undertaking as one of the sureties thereof, being first duly sworn, deposes and says:

That I am a householder in said District and reside at No. 2708 Fulton Street, in the city and county of San Francisco, State of California, and by occupation merchant.

That I am worth the sum of Twenty Thousand 00/100 Dollars, the sum in the said undertaking specified as the penalty thereof, over and above all my debts and liabilities and exclusive of property exempt from execution and that my property, now standing of record in my name, consists in part as follows:

Real estate, consisting of House and 2 lots at 2708 Fulton St., S. F., Cal. $20,000.00; 1/3 Interest in Bldg. & Impt's at Front & Jackson St., S. F., Cal., $6,000.00; Lot & Imprt's at Boyes Springs—Sonoma Co., Cal., $3,500.00; Total $29,500.00

That the encumbrances on the foregoing property are as follows: Mtge. of $6,000 on Fulton St., property on Front & Jackson is being purchased on an installment contract.

That my total net assets, above all liabilities and obligations on other bonds, is the sum of $50,000.00. [669]

That I am not surety upon outstanding penal bonds, now in force, aggregating total penalty $——.

AUGUST A. BERTRAND. (Seal)

Subscribed and sworn to before me this 5th day of May, A. D. 1925.

[Seal] THOMAS E. HAYDEN,
United States Commissioner for the Northern District of California.

United States of America,
Northern District of California,—ss.

George Solomon and Helena Solomon, whose names are subscribed to the foregoing undertaking as sureties thereof each being first duly sworn, deposes and says for him and herself:

That they are householders in said district and reside at No. 1304–27th Ave., in the city and county of San Francisco, State of California, and by occupation merchant and housewife.

That they are worth the sum of Twenty Thousand Dollars, the sum in the said undertaking specified as the penalty thereof, over and above all my debts and liabilities and exclusive of property exempt from execution and that our property, now standing of record in our names consists in part as follows:

Real estate, consisting of business and residential property on the S. E. Corner of 27th & Irving St., San Francisco, Cal. Value $40,000.00; Lot on cor. 15th Ave., & Wawona St., S. F. $5,000.

That the encumbrances on the foregoing property are as follows: None.

That my total net assets, above all liabilities and [670] obligations on other bonds, is the sum of $45,000.

That I am not surety upon outstanding penal bonds, now in force, aggregating total Penalty $——.

GEORGE SOLOMON. (Seal)
HELENA SOLOMON.

Subscribed and sworn to before me this 8th day of May, A. D. 1925.

[Seal] THOMAS E. HAYDEN,
United States Commissioner, for the Northern District of California.

[Endorsed]: Filed May 20, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [671]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEO. FORD et al.,
Defendants.

SUPERSEDEAS BOND OF C. H. BELLANGER.

KNOW ALL MEN BY THESE PRESENTS: That C. H. Bellanger, of the city and county of Los Angeles, State and Southern District of California as principal, and Liberty Bonds No. —— in lieu of sureties in the par value of $20,000.00 is firmly bound and held unto the United States of

America in the penal sum of $20,000.00, lawful money of the United States to be paid to the United States of America to which payment well and truly to be made the said C. H. Bellanger principal and depositor said above-described liberty bonds in lieu of surety, does hereby bind himself, his heirs, executors and administrators, by these presents.

Sealed with his hand and seal this 10th day of April, 1925.

WHEREAS, at the term of the Southern Division of the United States District Court for the Northern District of California, First Division, in a suit pending in the said court between the United States and Geo. Ford et al., numbered 15,914, in the records of the said court, a judgment [672] and sentence was made, given, rendered and entered against the defendant C. H. Bellanger in said suit numbered 15,914 as aforesaid, and the said C. H. Bellanger having obtained a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment and sentence made and entered in said suit and the citation directed to the United States of America, to be and appear in the said United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, pursuant to the terms and at the time fixed in said citation.

NOW, the condition of the above obligation is such that if the said C. H. Bellanger shall appear either in person or by attorney in the United States Circuit Court for the Ninth Circuit on such day

or days as may be appointed for the hearing of said cause in said court and prosecute said writ of error and if the said C. H. Bellanger shall abide by and obey all orders made by the United States Circuit Court of Appeals for the Ninth Circuit in the said cause, and the said C. H. Bellanger shall not without permission leave the jurisdiction of the last-named court, and shall surrender himself in execution of said judgment and sentence as said court may direct, if the judgment and sentence shall be affirmed, or the said writ of error dismissed, and if he shall appear for trial in the Northern District of California, on such day or days as may be appointed for retrial of said cause by said court and to abide the judgment of said court in the event said judgment and sentence against him shall be reversed by the United States Circuit Court of Appeals for the Ninth Circuit, then the above obligation to be void, otherwise, to remain in full force, virtue and effect. [673]

AND WHEREAS, under the provisions of Section 1320a of the United States Revenue Act, approved February 24, 1919, the undersigned has deposited with United States Commissioner for the Northern District of California at San Francisco, the official having authority to take and to approve this penal bond, in lieu of surety or sureties, the said Liberty Bonds,

AND WHEREAS, the above-described United States Liberty Bonds are deposited upon the condition and agreement herein given and made that said United States Commissioner shall be and he

is hereby authorized and empowered to collect or to sell the above-described bonds so deposited in case of any default in the performance of any of the conditions or stipulations of such penal bond. Such power to sell or to collect such bonds shall extend to his successor in office.

C. H. BELLANGER.

Signed, sealed and acknowledged before me this 10th day of April, 1925.

[Seal] THOMAS E. HAYDEN,

United States Commissioner for the Northern District of California at San Francisco.

Approved as to form.

THOS J. RIORDAN,
Asst. United States Attorney.

[Endorsed]: Filed Apr. 11, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [674]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEO. FORD et al.,

Defendants.

STIPULATION THAT BILL OF EXCEPTIONS AND ASSIGNMENT OF ERRORS MAY BE CONSIDERED FILED ON BEHALF OF EACH DEFENDANT.

It is hereby stipulated and agreed by and between plaintiff in the above-entitled cause and the defendants, Geo. Ford, Geo. Harris, J. Evelyn, Charles Horace Belanger and Vincent Quartararo, that the proposed bill of exceptions herein, filed and proposed on behalf of defendants last above named, may be and the same is hereby made the proposed bill of exceptions on behalf of said defendants, jointly and individually. It is further,

STIPULATED, that the assignment of errors filed jointly and severally on behalf of said last-named defendants, be and the same is hereby made the assignment of errors on behalf of each of said defendants, jointly and severally.

Dated: April 10, 1925.

STERLING CARR,
United States Attorney.
K. M. GREEN,
H. C. FAULKNER,
N. C. COGHLAN,
Attorneys for Defendants.

Upon the foregoing stipulation, so ordered.

JOHN S. PARTRIDGE,
United States District Judge. [675]

[Endorsed]: Filed Apr. 10, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [676]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEO. FORD et al.,

Defendants.

ORDER THAT ONE ENGROSSED BILL OF EXCEPTIONS MAY BE USED ON EACH SEPARATE WRIT OF ERROR.

It is hereby,

ORDERED, in accordance with the stipulation of counsel for the respective parties hereto entered into, and part of the engrossed bill of exceptions on file herein, that one engrossed bill of exceptions may be used on the separate writs of error, sued out by Charles H. Belanger, Vincent Quartararo, George Ford, George Harris, and J. Evelyn.

Dated: May 11th, 1925.

JOHN S. PARTRIDGE,
United States District Judge.

[Endorsed]: Filed May 11, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [677]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEO. FORD et al.,

Defendants.

ORDER EXTENDING TIME TO AND INCLUDING APRIL 25, 1925, TO PRESENT PROPOSED AMENDMENTS TO BILL OF EXCEPTIONS.

Good cause appearing therefor, it is hereby ordered that the plaintiff may have to and including the 25th day of April, 1925, within which to present proposed amendments to defendant's bill of exceptions.

Dated: This 20th day of April, 1925.

JOHN S. PARTRIDGE,
United States District Judge.

[Endorsed]: Filed Apr. 20, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [678]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEO. FORD et al.,

Defendants.

ORDER EXTENDING TIME TO AND INCLUDING MAY 9, 1925, TO ENGROSS AND SETTLE PROPOSED BILL OF EXCEPTIONS AND THE AMENDMENTS THERETO.

Good cause appearing therefor,

IT IS HEREBY ORDERED:

That the defendants in the above-entitled action have and they are hereby granted to and including the 9th day of May, 1925, within which to engross the proposed bill of exceptions and the amendments thereto and within which to have the bill of exceptions in the above-entitled action formally signed and settled by the Judge of this court, and within which to file said bill of exceptions.

Dated: April 29, 1925.

JOHN S. PARTRIDGE,
District Judge.

[Endorsed]: Filed Apr. 30, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [679]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEO. FORD et al.,

Defendants.

STIPULATION AND ORDER EXTENDING TIME TO AND INCLUDING MAY 14, 1925, TO FILE AND HAVE SETTLED ENGROSSED BILL OF EXCEPTIONS.

It is hereby stipulated by and between the respective parties hereto that the defendants herein may have to and including the 14th day of May within which to engross and file bill of exceptions herein and the amendments thereto and within which to have the engrossed bill of exceptions settled and allowed by the trial Judge.

STERLING CARR,
THOS. J. RIORDAN,
Attorneys for Plaintiff.
KENNETH M. GREEN,
H. C. FAULKNER,
J. B. O'CONNOR,
NATHAN C. COGHLAN,
Attorneys for Defendants.

Upon the foregoing stipulation so ordered.

PARTRIDGE,

United States District Judge.

[Endorsed]: Filed May 8, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [680]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEO. FORD et al.,

Defendants.

STIPULATION AND ORDER ENLARGING RETURN DAY OF WRIT OF ERROR AND ON CITATION ON WRIT OF ERROR TO AND INCLUDING JUNE 10th, 1925.

It is hereby stipulated and agreed that the return day on the writ of error and on the citation on the writ of error, may be and the same is hereby extended to and including the 10th day of June, 1925.

Dated: May 8th, 1925.

STERLING CARR,
Attorneys for Plaintiff.
KENNETH M. GREEN,
H. C. FAULKNER,
J. B. O'CONNOR,
NATHAN C. COGHLAN,
Attorneys for Defendants.

Upon the foregoing stipulation so ordered.

PARTRIDGE,
United States District Judge.

[Endorsed]: Filed May 8, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [681]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEO. FORD et al.,
Defendants.

ORDER FOR TRANSFER OF ORIGINAL EXHIBITS.

In accordance with the stipulation entered into between counsel for both parties, and incorporated

in the engrossed bill of exceptions herein, it is hereby,

ORDERED, that all the original exhibits introduced in the above-entitled action in their original form, be marked by the clerk and filed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

Dated: May 11th, 1925.

JOHN S. PARTRIDGE,
United States District Judge.

[Endorsed]: Filed May 11, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [682]

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO TRANSCRIPT ON WRIT OF ERROR.

I, Walter B. Maling, clerk of the United States District Court, for the Northern District of California, do hereby certify that the foregoing 682 pages, numbered from 1 to 682 inclusive, contain a full, true and correct transcript of the records and proceedings, in the case of United States vs. George Ford et al., No. 15,914, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to the praecipe for transcript on writ of error (copy of which is embodied herein).

I further certify that the cost for preparing and certifying the foregoing transcript on writ of error is the sum of Two Hundred Eighty-seven Dollars

and Ninety Cents, and that the same has been paid to me by the attorneys for the plaintiffs in error herein.

Annexed hereto are the original writs of error, returns to writs of error, and citations on writs of error.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 1st day of May, A. D. 1925.

[Seal] WALTER B. MALING,
Clerk.
By C. W. Calbreath,
Deputy Clerk. [683]

WRIT OF ERROR (GEORGE FORD, GEORGE HARRIS AND J. EVELYN).

United States of America,—ss.

The President of the United States of America, to the Honorable, the Judges of the District Court of the United States for the Northern District of California, GREETING:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between George Ford, George Harris and J. Evelyn, plaintiffs in error and United States of America, defendant in error, a manifest error hath happened, to the great damage of the said George Ford, George Harris and J. Evelyn, plaintiffs in error, as by their complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS, the Honorable WM. HOWARD TAFT, Chief Justice of the United States, the 10th day of April, in the year of our Lord one thousand nine hundred and twenty-five.

[Seal] WALTER B. MALING,
Clerk of the United States District Court, Northern District of California.
By C. W. CALBREATH,
By C. W. Calbreath,
Deputy Clerk.

Allowed by:
JOHN S. PARTRIDGE,
D. J. [684]

Due service and receipt of a copy of the within writ of error is hereby admitted this 13th day of April, 1925.

STERLING CARR,
Attorney for Deft. in Error.

[Endorsed]: No. 15,914. United States District Court for the Northern District of California. George Ford, George Harris, and J. Evelyn, Plaintiff in Error, vs. United States of America, Defendant in Error. Writ of Error. Filed Apr. 13, 1925. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk.

RETURN TO WRIT OF ERROR.

The Answer of the Judges of the United States District Court, for the Northern District of California, to the within writ of error:

As within we are commanded, we certify under the seal of our said District Court, in a certain schedule to this writ annexed, the record and all proceedings of the plaint whereof mention is within made, with all things touching the same, to the United States Circuit Court of Appeals, for the Ninth Circuit, within mentioned, at the day and place within contained.

We further certify that a copy of this writ was on the 13th day of April, A. D. 1925, duly lodged in the case in this court for the within-named defendant in error.

By the Court.

[Seal] WALTER B. MALING,

Clerk, U. S. District Court, Northern Dist. of California.

By C. W. Calbreath,
Deputy Clerk. [685]

WRIT OF ERROR (VINCENT QUARTARARO).

United States of America,—ss.

The President of the United States of America, to the Honorable, the Judges of the District Court of the United States for the Northern District of California, GREETING:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you between Vincent Quartararo, plaintiff in error, and United States of America, defendant in error, a manifest error hath happened to the great damage of the said Vincent Quartararo, plaintiff in error, as by his complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Cir-

cuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS, the Honorable WM. HOWARD TAFT, Chief Justice of the United States, the 10th day of April, in the year of our Lord one thousand nine hundred and twenty-five.

[Seal] WALTER B. MALING,
Clerk of the United States District Court, Northern District of California.

By C. W. Calbreath,
Deputy Clerk.

Allowed by:
JOHN S. PARTRIDGE,
D. J. [686]

Due service and receipt of a copy of the within writ of error is hereby admitted this 13th day of April, 1925.

STERLING CARR,
Attorney for Deft. in Error.

[Endorsed]: No. 15,914. United States District Court for the Northern District of California. Vincent Quartararo, Plaintiff in Error, vs. United States of America, Defendant in Error. Writ of

Error. Filed Apr. 13, 1925. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk.

RETURN TO WRIT OF ERROR.

The answer of the Judges of the United States District Court, for the Northern District of California, to the within writ of error:

As within we are commanded, we certify under the seal of our said District Court, in a certain schedule to this writ annexed, the record and all proceedings of the plaint whereof mention is within made, with all things touching the same, to the United States Circuit Court of Appeals, for the Ninth Circuit, within mentioned, at the day and place within contained.

We further certify that a copy of this writ was on the 13th day of April, A. D. 1925, duly lodged in the case in this court for the within-named defendant in error.

By the Court.

[Seal] WALTER B. MALING,
Clerk U. S. District Court, Northern Dist. of California.

By C. W. Calbreath,
Deputy Clerk. [687]

WRIT OF ERROR (CHARLES H. BELANGER).

United States of America,—ss.

The President of the United States of America, to the Honorable, the Judges of the District Court of the United States for the Northern District of California, GREETING:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between Charles H. Belanger, plaintiff in error, and the United States of America, defendant in error, a manifest error hath happened, to the great damage of the said Charles H. Belanger, plaintiff in error, as by his complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under you seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and

according to the laws and customs of the United States, should be done.

WITNESS, the Honorable WM. HOWARD TAFT, Chief Justice of the United States, the 10th day of April, in the year of our Lord one thousand nine hundred and twenty-five.

[Seal] WALTER B. MALING,
Clerk of the United States District Court, Northern District of California.

By C. W. Calbreath,
Deputy Clerk.

Allowed by:
JOHN S. PARTRIDGE,
D. J. [688]

Due service and receipt of a copy of the within writ of error is hereby admitted this 13th day of April, 1925.

STERLING CARR,
Attorney for Deft. in Error.

[Endorsed]: No, 15,914. United States District Court for the Northern District of California. Charles H. Belanger, Plaintiff in Error, vs. United States of America, Defendant in Error. Writ of Error. Filed Apr. 13, 1925. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk.

RETURN TO WRIT OF ERROR.

The answer of the Judges of the United States District Court, for the Northern District of California, to the within writ of error:

As within we are commanded, we certify under the seal of our said District Court, in a certain

schedule to this writ annexed, the record and all proceedings of the plaint whereof mention is within made, with all things touching the same, to the United States Circuit Court of Appeals, for the Ninth Circuit, within mentioned, at the day and place within contained.

We further certify that a copy of this writ was on the 13th day of April, A. D., 1925, duly lodged in the case in this court for the within-named defendant in error.

By the Court.

[Seal] WALTER B. MALING,

Clerk U. S. District Court, Northern Dist. of California.

By C. W. Calbreath,
Deputy Clerk. [689]

CITATION ON WRIT OF ERROR (GEORGE FORD, GEORGE HARRIS AND J. EVELYN).

United States of America,—ss.

The President of the United States, to United States of America, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error duly issued and now on file in the clerk's office of the United States District Court

for the Northern District of California, wherein George Ford, George Harris and J. Evelyn, are plaintiff's in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable JOHN S. PARTRIDGE, United States District Judge for the Northern District of California this 10 day of April, A. D. 1925.

JOHN S. PARTRIDGE,
United States District Judge. [690]

Due service and receipt of a copy of the within citation is hereby admitted, this 13th day of April, 1925.

STERLING CARR,
Attorney for Deft. in Error.

[Endorsed]: No. 15,914. United States District Court for the Northern District of California. George Ford, George Harris and J. Evelyn, Plaintiff in Error, vs. United States of America, Defendant in Error. Citation on Writ of Error, Filed Apr. 13, 1925. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk.

CITATION ON WRIT OF ERROR (VINCENT QUARTARARO).

United States of America,—ss.

The President of the United States, to the United States of America, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error duly issued and now on file in the clerk's office of the United States District Court for the Northern District of California, wherein Vincent Quartararo, is, plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable JOHN S. PARTRIDGE, United States District Judge for the Northern District of California this 10 day of April, A. D. 1925.

JOHN S. PARTRIDGE,
United States District Judge. [691]

Due service and receipt of a copy of the within citation is hereby admitted this 13th day of April, 1925.

STERLING CARR,
Attorney for Deft. in Error.

[Endorsed]: No. 15,914. United States District Court for the Northern District of California. Vincent Quartararo, Plaintiff in Error, vs. United States of America, Defendant in Error. Citation on Writ of Error. Filed Apr. 13, 1925. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk.

CITATION ON WRIT OF ERROR (CHARLES H. BELANGER).

United States of America,—ss.

The President of the United States, to the United States of America, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error duly issued and now on file in the clerk's office of the United States District Court for the Northern District of California, wherein Charles H. Belanger, is, plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable JOHN S. PARTRIDGE, United States District Judge for the

Northern District of California this 10 day of April, A. D. 1925.

JOHN S. PARTRIDGE,
United States District Judge. [692]

Due service and receipt of a copy of the within citation is hereby admitted this 13th day of April, 1925.

STERLING CARR,
Attorney for Deft. in Error.

[Endorsed]: No. 15,914. United States District Court for the Northern District of California. Charles H. Belanger, Plaintiff in Error, vs. United States of America, Defendant in Error. Citation on Writ of Error. Filed Apr. 13, 1925. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk.

[Endorsed]: No. 4602. United States Circuit Court of Appeals for the Ninth Circuit. George Ford, George Harris and J. Evelyn, Plaintiffs in Error, vs. United States of America, Defendant in Error. Vincent Quartararo, Plaintiff in Error, vs. United States of America, Defendant in Error. Charles H. Belanger, Plaintiff in Error, vs. United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the Southern Division of the United States District

Court of the Northern District of California, First Division.

Filed June 2, 1925.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,

Deputy Clerk.

[Endorsed]: Printed Transcript of Record. Volume I and Volume II. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

No. 4602

United States

Circuit Court of Appeals

For the Ninth Circuit.

GEORGE FORD, GEORGE HARRIS and J. EVELYN,
Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error,

VINCENT QUARTARARO,
Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error,

CHARLES H. BELANGER,
Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error.

Upon Writs of Error to the Southern Division of the United States District Court for the Northern District of California, First Division.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

At a stated term, to wit, the October Term, A. D. 1925, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Friday, the sixth day of November, in the year of our Lord one thousand nine hundred and twenty-five. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable WILLIAM H. HUNT, Circuit Judge; Honorable WALLACE McCAMANT, Circuit Judge.

No. 4602.

GEORGE FORD, GEORGE HARRIS and J. EVELYN,
Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error.

VINCENT QUARTARARO,
Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error.

CHARLES H. BELANGER,
Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error.

ORDER OF SUBMISSION.

ORDERED above-entitled cause argued by Mr. Kenneth M. Green and Mr. Harold C. Faulkner counsel for plaintiffs in error Ford, Harris, Evelyn and Belanger, and by Mr. Nathan C. Coghlan, counsel for plaintiff in error Quartararo, and by Mr. T. J. Sheridan, Asst. U. S. Attorney, counsel for the defendant in error, and submitted to the Court for consideration and decision.

At a stated term, to wit, the October Term, A. D. 1925, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the fourth day of January, in the year of our Lord one thousand nine hundred and twenty-six. Present: The Honorable WILLIAM H. HUNT, Circuit Judge, Presiding; Honorable WILLIAM W. MORROW, Circuit Judge.

No. 4602.

GEORGE FORD, GEORGE HARRIS and J. EVELYN,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

VINCENT QUARTARARO,
Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error.

CHARLES H. BELANGER,
Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error.

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF JUDGMENT.

By direction of the Honorable William B. Gilbert, William H. Hunt and Wallace McCamant, Circuit Judges, before whom the cause was heard, ORDERED that the typewritten opinion this day rendered by this Court in the above-entitled cause be forthwith filed by the Clerk and that a judgment be filed and recorded in the minutes of this court in the said cause in accordance with the opinion filed therein.

By direction of the Honorable Wallace McCamant, Circuit Judge, ORDERED that his dissent as to plaintiff in error Quartararo, expressed in the opinion of this Court, be entered in the record of this cause.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 4602.

GEORGE FORD, GEORGE HARRIS, J. EVELYN, VINCENT QUARTARARO and CHARLES H. BELANGER,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

OPINION U. S. CIRCUIT COURT OF APPEALS.

Writ of Error to the Northern District of California, Southern Division.

Before GILBERT, HUNT and McCAMANT, Circuit Judges.

Plaintiffs in error and fifty-five others were indicted for conspiracy to violate the National Prohibition Act. A number of the defendants named in the indictment were not apprehended. The defendants Salvadore Crivello and Marino Crivello pleaded guilty. Twenty-nine of the defendants were tried; nineteen of them were acquitted, and ten, including the five plaintiffs in error, were convicted. Ford, Harris and Evelyn were respectively the master, first and second officers of the "Quadra," a British vessel of Canadian registry. On the 12th of October, 1924, this vessel was seized

by the revenue cutter "Shawnee" as a rum runner operating within a prohibited distance of the Farallone Islands. It is the theory of the Government that Quartararo, Belanger and others who have sued out no writs of error were co-operating with the officers of the "Quadra" and other rum-running vessels in landing liquor on the California Coast pursuant to a conspiracy for such purpose.

McCAMANT, Circuit Judge.—Error is assigned on the overruling of a demurrer to the indictment and the denial of a motion to quash the indictment. The charge was a violation of Section 37 of the Criminal Code, which is as follows: "If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than ten thousand dollars, or imprisoned not more than two years, or both."

The indictment alleges the enactment of the National Prohibition Act and the Tariff Act of Sept. 21, 1922, also the negotiation of the treaty between Great Britian and the United States of date May 22, 1924. Subdivision b of Section 593 of the Tariff Act and Sections 1, 2 and 3 of Article II of the Treaty are quoted. It is alleged that the Farallone Islands are an American possession situate about 25 miles west of San Francisco. The indictment then charges that the sixty defendants "and divers other persons to this Grand Jury and

these Grand Jurors unknown, did at the bay of San Francisco, within the district and division aforesaid, and within the jurisdiction of this court, on the 1st day of January, 1924, the real and exact date of which is to this Grand Jury and these Grand Jurors unknown, and continuously at all the times thereafter up to and including the date of the filing of this indictment, wilfully, unlawfully, feloniously and knowingly conspire, combine, confederate and agree together and with divers other persons whose names are to these Grand Jurors and to this Grand Jury unknown, to commit certain offenses against the United States that is to say:

(a) To wilfully, unlawfully, feloniously and knowingly sell, transport, import, deliver, furnish and possess within the United States intoxicating liquor for beverage purposes, to wit, whiskey, wine, champagne, gin and beer containing one-half of one per centum and more of alcohol by volume and fit for use and intended for use for beverage purposes within the United States, the said acts to be then and there unlawful and prohibited and contrary to the provisions of the Act of October 28, 1919, known as the "National Prohibition Act," and the convention, agreement and treaty between the United States and Great Britain of May 22, 1924, and intended for use for beverage purposes in violation of said Act and said Treaty;

(b) Wilfully, unlawfully, feloniously, knowingly and fraudulently import and bring into the United States, and to assist in importing and

bringing into the United States merchandise contrary to law, to wit, whiskey, champagne, wine, gin and beer containing one-half of one per centum and more of alcohol by volume and fit for use and intended for use for beverage purposes within the United States, the said acts to be then and there unlawful and prohibited and contrary to the provisions of Section 593, subdivision (b) of the Tariff Act of 1922, and the convention, agreement and treaty between the United States and Great Britian of May 22, 1924, and intended to be imported and brought into the said United States in violation of said Acts and Treaty."

It is alleged that the conspiracy was continuously in operation from January 1, 1924, to the date of the filing of the indictment which was November 20, 1924. Four overt acts in furtherance of the conspiracy are then set up:

(a) That the "Quadra" was loaded at Vancouver, B. C., in September, 1924, with 12,000 cases of liquor which were carried to a point near the Farallone Islands, where a portion of the cargo was transferred to motor-boats named which carried the liquor into the United States.

(b) That on the 29th of September the "Quadra" delivered a barrel containing one hundred gallons of whiskey to the motor-boat "903 B," which transported the whiskey to San Francisco.

(c) That on the 11th of October the "Quadra" delivered to the same motor-boat a named quantity of alcohol, gin, brandy, whisky, and vermouth, which was transported to San Francisco.

(d) That on the 12th of October the "Quadra" delivered to the defendants Pensotti and McKinzie on the motor-boat "C 55" eighty-nine sacks of whiskey and one case of beer, which the said defendants attempted to transport into San Francisco Bay. It is charged that this delivery was made near the Farallone Islands and at a less distance therefrom than could be traversed by the "Quadra" and the "C 55" in an hour.

Plaintiffs in error contend that the indictment is defective in that it does not specify the respect in which the importation of the liquor was contrary to the provisions of Section 593, subdivision b, of the Tariff Act of 1922. In support of this objection Keck vs. U. S., 172 U. S. 434, is cited. The charge in that case was importing diamonds "contrary to law." This case is distinguished in Miller vs. U. S., 300 F. 529, on the ground that it is presumably lawful to import merchandise and unlawful to sell or possess liquor. It is unlawful to import liquor. Sec. 3 of Title II of the National Prohibition Act, 41 Statutes, 317, Sec. 2 Act of Nov. 23, 1921, 42 Statutes, 222. The charge in this case is not smuggling, but conspiracy. "The offense which it is charged the defendant conspired to commit need not be stated with that particularity that would be required in an indictment charging the offense itself." Anderson vs. U. S., 260 F. 557, 558; Rulovitch vs. U. S., 286 F. 315, 317; Taylor vs. U. S., 2 F. (2d) 444, 446. The defendants were entitled to be apprised of the charge against them with a sufficient recital of detail to enable them

to make their defense and to protect them in a plea of former acquittal or conviction in the event of a second prosecution for the same offense. We think a conspiracy to violate the Tariff Act is sufficiently charged. A conspiracy to violate the National Prohibition Act is unquestionably charged.

It is argued that there can be no criminal offense in violating the treaty between this country and Great Britain. This is true, but the reference to the treaty may be rejected as surplusage and the indictment still states facts sufficient to constitute a crime. Bailey vs. U. S., 5 F. (2d) 437; Remus vs. U. S., 291 F. 501; U. S. vs. Weiss, 293 F. 992, 995; U. S. vs. Drawdy, 288 F. 567, 570. Plaintiffs in error cite Torphy vs. State, 118 N. E. 355, where the Indiana Court reversed a conviction because the indictment improperly charged that defendant had been previously convicted. Such an allegation would be manifestly damaging, but the reference to the treaty in this indictment could not have prejudiced these plaintiffs in error.

It is competent to charge a conspiracy to violate more than one penal statute. U. S. vs. Rabinowich, 238 U. S. 78, 86; Frohwerk vs. U. S., 249 U. S. 204, 210; Remus vs. U. S., 291 F. 501; Powers vs. U. S., 293 F. 964; Taylor vs. U. S., 2 F. (2d) 444, 447; Bailey vs. U. S., 5 F. (2d) 437. A conviction is warranted in such case if the evidence proves a conspiracy to violate one of the statutes named. Kepl vs. U. S., 299 F. 590. The District Court did not err in overruling the demurrer and denying the motion to quash the indictment.

It is the contention of plaintiffs in error that the seizure of the "Quadra" was wrongful for the reason that the vessel at the time she was seized was on the ocean beyond the reach of the laws of the United States and her officers and crew were British subjects. It is earnestly argued that for these reasons the District Court had no jurisdiction of the persons of plaintiffs in error Ford, Harris and Evelyn. It appears that on the seizure of the "Quadra" the vessel, her officers and crew were brought to San Francisco against their will. The defendants were present in court when the case was tried; this was sufficient to vest the District Court with jurisdiction over their persons. The question presented on this record is not whether their arrest was regular, but whether they were guilty and were fairly tried. "The jurisdiction of the Court in which the indictment is found is not impaired by the manner in which the accused is brought before it." Mahon vs. Justice, 127 U. S. 700, 708; Cook vs. Hart, 146 U. S. 183; Adams vs. New York, 192 U. S. 585; Pettibone vs. Nichols, 203 U. S. 192. See also Ker vs. Illinois, 119 U. S. 436, 444.

In Latham vs. U. S., 2 F. (2d) 208, 210, the Circuit Court of Appeals for the Fourth Circuit says: "The defendants being under arrest in the United States, it makes no difference that they were outside the jurisdiction when by aiding and abetting they become principals in crime committed in the United States. They could not have been extradited as fugitives from justice because they had not fled from the United States, but being under arrest

in the jurisdiction they could be tried and convicted as participants in the crime."

The question of venue is less readily answered. It was incumbent on the Government to prove that these plaintiffs in error were parties to a crime committed in the Northern District of California.

The indictment charges a conspiracy entered into at San Francisco Bay within the said district and continuing from January 1, to Nov. 20, 1924. The purpose of the conspiracy was to violate the Prohibition and Tariff Acts by importing, selling and possessing intoxicating liquor in said district.

Evidence was received that in April or May, 1924, the plaintiff in error Quartararo employed the defendant, Sam (Salvadore) Crivello, to carry liquor in the motor-boats "Skidaddle" and "California" from a point outside the Farallones to Oakland Creek and Pacific City, which are points within the Northern District of California, Southern Division. This was a continuing employment. Under it Crivello received liquor from the "Norbund," the "Malahat" and the "Quadra." Quartararo introduced Crivello to plaintiff in error Belanger and the latter actively co-operated in the enterprise. At the instance of Belanger, Crivello transported sacks from the city to the "Malahat," from which vessel they were removed to the "Quadra." These sacks were suitable containers for bottled liquor and were so used. There was evidence that Belanger had some control over the "Malahat" and the "Quadra." He gave written

orders to transfer liquor from one vessel to the other and orders also to bring cargo ashore.

Marino Crivello, brother of Sam, was subsequently employed by Belanger to transport liquor from the "Quadra" to Drake's Bay in Marino's boat, the "Marconi."

The evidence shows a number of deliveries of liquor from the "Norburn," the "Malahat" and the "Quadra," and there is no evidence that money passed at the time when the deliveries were made. The deliveries of liquor were in fulfilment of orders designated by number. This is not the simple case of the sale and delivery of liquor on the high seas by a foreign vessel. The deliveries were made pursuant to prearrangement. There is no evidence that anyone from these vessels came ashore and no evidence that either Quartararo or Belanger visited the vessels. The "Kiltuish" came out to the "Quadra" from time to time to supply her with oil. This service was manifestly rendered pursuant to an arrangement previously made therefor.

It appears that the "Malahat" left Vancouver, B. C., May 23, 1924, with a cargo of liquor destined to Buenaventura, Columbia; the "Coal Harbor" left the same port with a similar cargo July 5, 1924, destined to La Libertad, San Salvador, and the "Quadra" left Vancouver Sept. 9, 1924, destined to La Libertad and carrying a large cargo of miscellaneous liquors. The shipper of all these cargoes was Consolidated Exporters Corporation Limited, a Canadian corporation. It was incorporated Aug. 24, 1922. Among the stated "objects

for which the Company is established" are these: a. To take over as a going concern assets of David Liquor Company Limited. . . . Nat Bell Liquor Company, Limited. . . . B. C. Liquor Company, Limited, and Dominion Liquor Company, Limited. b. To import, export and deal in wines and alcoholic . . . beverages of all kinds . . . in so far as the Law allows the same to be done.

The annual report of this corporation made as of date October 31, 1923, shows that plaintiff in error Belanger was one of its directors. Accompanying the report is a certificate that on the 2d of June, 1924, one M. Ripstein had ceased to hold office as director. There is no corresponding showing as to Belanger and the inference is warranted that he was a director in this corporation during the summer and early autumn of 1924.

Instead of proceeding to the destination named in their papers, the "Malahat," the "Coal Harbor" and the "Quadra" all proceeded to a point on the high seas off the Golden Gate. They there exchanged liquor with each other and the "Malahat" and the "Quadra" delivered liquor to small vessels for transportation to the shore.

On the entire case the conclusion is warranted that about the 1st of May, 1924, Quartararo and Sam Crivello, within the Northern District of California, conspired to import and possess liquor; that Belanger and his corporation either had an understanding with Quartararo at that time or shortly thereafter became parties to the conspiracy;

and that the departure of the "Quadra" with her cargo from Vancouver on the 9th of September was pursuant to the same conspiracy.

Three of the four overt acts alleged in the indictment are clearly proved and at least one of them took place in the Northern District of California.

It is well settled that a prosecution under Section 37 of the Criminal Code may be maintained either at the place where the conspiracy was formed or where one or more of the overt acts took place. Hyde vs. U. S., 225 U. S. 347, 362–363; Brown vs. Elliott, 225 U. S. 392, 400; Jianole vs. U. S., 299 F. 496, 498; Latham vs. U. S., 2 F. (2d) 208; Horwitz vs. U. S., 5 F. (2d) 129. One physically without the jurisdiction may be a party to a crime committed therein. Burton vs. U. S., 202 U. S. 344, 387, 389; Strassheim vs. Daily, 221 U. S. 280, 284–285. This principle is applicable to prosecutions for conspiracy. Dealy vs. U. S., 152 U. S. 539, 546.

It is argued that the above authorities, or some of them, are based upon Section 731 of the Revised Statutes, which is as follows:

> "When any offense against the United States is begun in one judicial district and completed in another, it shall be deemed to have been committed in either, and may be dealt with, inquired of, tried, determined, and punished in either district, in the same manner as if it had been actually and wholly committed therein."

It is contended that there is a distinction between a conspiracy formed in one state which is carried out in another state and a conspiracy formed or effected in a foreign country. In this case we are concerned with a conspiracy formed in the Northern District of California, which was effected in part by acts which took place in Canada and on the high seas. Dealy vs. U. S., 152 U. S. 539, 547, is in point. It was contended in that case that the overt acts relied on were all committed in Canada. The Court said: "If the conspiracy was entered into within the limits of the United States and the jurisdiction of the Court, the crime was then complete, and the subsequent overt act in pursuance thereof may have been done anywhere." In Horwitz vs. U. S., 5 F. (2d) 129, the District Court for Massachusetts was held to have jurisdiction to try a conspiracy charge when the acts effectuating the conspiracy took place for the most part in a foreign country and on the high seas.

The District Court had jurisdiction to try this case and there was no error in denying the motions for a directed verdict.

Liquor on the "Quadra" was seized. A petition was filed to suppress this evidence and when the petition was denied an objection and exception were reserved to receiving the liquor in evidence. The contention of plaintiffs in error is that at the time of the seizure the "Quadra" was 13½ miles distant from the nearest point on the Farallone Islands. The treaty between Great Britain and

this country ratified May 22, 1924, contains the following provisions:

"ARTICLE II.

"(1) His Britannic Majesty agrees that he will raise no objection to the boarding of private vessels under the British flag outside the limits of territorial waters by the authorities of the United States, its territories or possessions in order that enquiries may be addressed to those on board and an examination be made of the ship's papers for the purpose of ascertaining whether the vessel or those on board are endeavoring to import or have imported alcoholic beverages into the United States, its territories or possessions in violation of the laws there in force. When such enquiries and examination show a reasonable ground for suspicion, a search of the vessel may be instituted.

"(2) If there is reasonable cause for belief that the vessel has committed or is committing or attempting to commit an offense against the laws of the United States, its territories or possessions prohibiting the importation of alcoholic beverages, the vessel may be seized and taken into a port of the United States, its territories or possessions for adjudication in accordance with such laws.

"(3) The rights conferred by this article shall not be exercised at a greater distance from the coast of the United States, its territories or possessions than can be traversed in one hour by the vessel suspected of endeavoring to commit the offense. In cases, however, in which the liquor is intended to be conveyed to the United States

its territories or possessions by a vessel other than the one boarded and searched, it shall be the speed of such other vessel and not the speed of the vessel boarded, which shall determine the distance from the coast at which the right under this article can be exercised."

This treaty is an agreement between the two nations defining the limits within which British vessels may be searched and seized. There is an implied agreement that this country will not search or seize them without the limits fixed. The Frances Louise, 1 F. (2d) 1004; The Marjorie E. Bachman, 4 F. (2d) 405; The Sagatind, 4 F. (2d) 928; La Ninfa, 75 F. 515.

On the 17th of February, 1925, the witness August Anderson made a test of the speed of the "C 55"; he testified that her average speed was 6.6 knots per hour. The Government's evidence was that the "Quadra" was seized at a point 5.7 knots from the nearest point in the Farallones. There was evidence that the "C. 55" had received liquor from the "Quadra" and the inference was plain that it was the intention to transport this liquor to San Francisco. The Government therefor contends that the seizure was warranted by the position in which the "Quadra" was found. The officers of the "Quadra" testified that at the time of the seizure the vessel was 13½ miles from the nearest point of the Farallones.

Plaintiffs in error contend that the question was one for the jury and they reserved exceptions to the refusal of the Court to charge the jury on the sub-

ject. The question arose on the admissibility of evidence and it is the function of the Court to determine what evidence is admissible. It follows that the Court must determine for itself the facts necessary to be determined in passing on objections to testimony offered. The Supreme Court has recently so held. Steele vs. U. S., 267 U. S. 505, 511.

The evidence shows that the "C 55" had no load when her speed was tested on the 17th of February and an objection was reserved to any evidence of her speed unless the evidence was confined to conditions substantially identical with those obtaining at the time of the seizure. This contention is supported by the Over the Top, 5 F. (2d) 838, a decision rendered by the District Court for Connecticut. We think this construction of the treaty is unwarranted by the language used: "The rights conferred by this article shall not be exercised at a greater distance from the Coast of the United States its territories or possessions than can be traversed in one hour by the vessel." We do not find any qualifying words after "vessel" such as "when loaded" or "under conditions of wind and tide prevailing at the time of seizure." We should not read into the treaty limitations which have not been written therein. The Courts of this country should be careful not to fritter away by construction concessions secured by the State Department for the purpose of combatting the rum running abuse. The treaty, fairly construed, embodies the consent of Great Britain that her ships may be searched and seized under proper condi-

tions within such a distance from our shores as can be traversed in an hour by any of the boats on which they discharge their liquor. The evidence shows that the "C 55" can traverse 6.6 knots within that time. The "Quadra" was therefore subject to search and seizure if she was within 6.6 miles of the Farallones.

The testimony on this subject is in hopeless conflict. Captain Howell and Ensign Morse of the "Shawnee" testify that at the time of the seizure they took the bearings *of* Point Reyes and the North Farallones. With the aid of these bearings the position of the "Quadra" was platted on the chart and found to be 5.7 nautical miles from the North Farallones. This result was checked by taking a sounding. The depth of water was found to be 44 fathoms. This was the depth of water as shown on the official chart at the point indicated by the calculations.

On the other hand, plaintiffs in error Harris and Evelyn, first and second officers of the "Quadra," testify that they took bearings *of* Point Reyes and the South Farallones lighthouse. Their calculations based on these observations were checked by R. Lovez, an expert residing in San Francisco, who testified that if these bearings were correctly taken, the "Quadra" was distant 13.6 miles from the nearest point in the Farallones at the time of the seizure.

Testimony was also offered to show that the sounding relied on by the Government was not taken at the place of the seizure, but was taken

while the "Quadra" was being towed into San Francisco Bay and after the tow had been in progress for an hour and a half. The Government countered this evidence by testimony that Jacob Schybinger, the witness who so testified for the defendants, was in the engine-room of the "Shawnee" at the time when he said the sounding was taken and that he could not have seen what was happening on deck.

The burden of proof was on plaintiffs in error. In a prosecution for conspiracy to violate the Prohibition Act liquor kept for sale and in the possession of the defendants is ordinarily admissible in evidence. Plaintiffs in error in seeking the suppression of this evidence must show some good reason for suppressing it. The District Court heard and saw the witnesses. We cannot say on this record that he erred in holding that plaintiffs in error had not sustained the burden which the law laid upon them on this issue.

In passing on this question the District Court used the following language:

"Of course, it must be apparent to anybody that there has been perjury in this case. Whatever my personal views may be in regard to it, the testimony that has been given here by the officers of the 'Shawnee' and the testimony that has been given here by the two others that were produced, cannot both be true in regard to that sounding. . . . The Court will find that the ship was seized within the limits provided by the treaty with Great Britain." An exception was reserved to the language used.

Plaintiffs in error are mistaken in assuming that the reference to perjury was applicable to the testimony of Harris and Evelyn. It manifestly referred to the testimony of Schybinger and Gisbourne, a member of the crew of the "Quadra," who corroborated him. Gisbourne was a defendant, but he was acquitted.

The testimony with reference to the sounding was utterly irreconcilable and the conflict was not due to any mistake in recollection. The Court, moreover, was passing on an issue which was for determination by him and not by the jury. The federal practice justifies the trial Court in commenting on the testimony. The language excepted to was perhaps ill chosen, but it did not involve such prejudice to Harris and Eyelyn as to call for the reversal of the judgment as to them.

Assuming that the position of the "Quadra" was as testified by Captain Howell and Ensign Morse, the seizure was warranted by the provisions of the treaty above quoted and Section 586 of the Tariff Act of Sept. 21, 1922, which is in part as follows:

"The master of any vessel from a foreign port or place who allows any merchandise (including sea stores) to be unladen from such vessel at any time after its arrival within four leagues of the coast of the United States and before such vessel has come to the proper place for the discharge of such merchandise, and before he has received a permit to unlade, shall be liable to a penalty equal to twice the value of the merchandise but not less

than $1,000, and such vessel and the merchandise shall be subject to seizure and forfeiture." The day preceding the seizure the "Quadra" had discharged a part of her cargo of liquor in the "903 B" and this vessel was seized in San Francisco Bay while attempting to land the liquor. At the time the "Shawnee" overtook the "Quadra" the "C 55" was hove to at her side with a supply of liquor received from the "Quadra." There was a present attempt to transfer liquor from the "Quadra" to the California Coast. This justified the seizure. The Pictonian, 3 F. (2d) 145. Captain Ford of the "Quadra" refused to show his papers as required by Section 1 of Article II of the Treaty and by Section 2 of the same Article Captain Howell was warranted in taking the "Quadra" into a United States port for adjudication of her status in accordance with our laws. The facts certainly made out a case of "reasonable cause for belief that the vessel has committed or is committing or attempting to commit an offense against the laws of the United States . . . prohibiting the importation of alcoholic beverages." The liquor found on the "Quadra" was properly received in evidence. Canada vs. U. S., 5 F. (2d) 488.

It is contended that there was error in receiving the testimony of Sam Crivello about the liquor secured by him from the "Norburn" about the 1st of May, 1924, and delivered to Quartararo at Oakland Creek. It is argued that this incident bore no relation to the conspiracy involved in the pres-

ent prosecution. Plaintiffs in error cite Terry vs. U. S., 7 F. (2d) 28, and Crowley vs. U. S., 7 F. (2d) —. These cases hold that in a prosecution for conspiracy the Government's evidence must be confined to proof of the conspiracy charged and the Terry case holds that "the scope of the conspiracy must be gathered from the testimony." Within these rules we think the testimony as to the "Norburn" incident was admissible. The Government explicitly proved that prior to Crivello's reception of liquor from the "Norburn" he had been employed by Quartararo to receive and transport liquor from various vessels and to deliver it to Quartararo at Oakland Creek. Here was clear proof of a conspiracy between these two defendants within the allegations of the indictment. The jury was warranted in finding from the evidence that either Belanger and his corporation were originally parties to the conspiracy, or that they and the officers and crew of the "Quadra" adhered to it subsequently. The indictment charges that the defendants conspired with other parties to the grand jury unknown. Under this allegation it was competent to receive evidence of acts in furtherance of the conspiracy by Belanger's corporation, Consolidated Exporters Company, Limited, and the officers and crew of the "Malahat" and the "Coal Harbor." Thomas vs. U. S., 156 F. 897, 907.

A majority of the Court are of the opinion that there is evidence to sustain the verdict as to the defendant Quartararo and that there was no error

of which he had a right to complain. It is the view of the writer that there was error as to Quartararo in the following matter.

Counsel for the Government in his opening statement to the jury said: "We will show you . . . that the individuals in San Francisco who were a part of this conspiracy . . . used a system of $1 bills to secure their cargo; that these bills were clipped in half, one-half being delivered to the captain or supercargo of the 'Quadra,' and the other half going out in the small motor-boat that went to secure the particular load of cargo called for, these $1 bills having upon their back the list and order for the specific amount, and the kind of liquor that was to be secured from the 'Quadra,' that when they got out there the bills were matched up, and when they were matched up the cargo was delivered to the particular motor-boat, and then they brought their cargo right in to San Francisco." The Government proved that about Nov. 10, 1924, someone left eighty-three dollar bills at the Bank of Italy. These bills had been clipped in two and subsequently pasted together. The party having the mutilated bills had requested that they be exchanged for fresh money. It did not appear that Quartararo left them at the bank, but there was proof that endorsements on these bills were in the handwriting of Quartararo. With no other evidence connecting them up with the conspiracy these bills were received in evidence. There was an entire failure of proof as to the system by which business was transacted on the

"Quadra" outlined in the opening statement. The bills contained endorsements of lists of liquor. The quantities of liquor listed on the bills were large, indicating that the party making the lists was trafficking in liquors. For example, one of the bills in Exhibit 31 contained on the front of the bill the following:

"10 Plymouth Gin
5 Royal George
5 Highland Queen
2 Drums Alcohol.
Not to be filled,
only for record on order No. 15."

The endorsement on the back of this bill was:

"30 Burnett's Gin
45 Plymouth Gin

75

The bills were left with the bank about four weeks after the seizure and at a time when the conspiracy was at an end so far as the testimony shows. The effect of this testimony was not to connect Quartararo with the conspiracy charged, but to create an inference that he was dealing in intoxicating liquors generally. The writer believes that it was error to receive these bills in evidence, but error prejudicial to Quartararo only. The error was emphasized by a reference to the dollar bills in the charge of the Court. In the opinion of the writer the instruction requested by Quartararo withdrawing these bills from consideration by the jury should have been

given. Terry vs. U. S., 7 F. (2d) 28. A majority of the Court think otherwise.

Error is assigned on the reception in evidence of logs kept by J. H. Mason, Chief Engineer of the "Quadra" and J. A. McLennan, one of the crew. Both Mason and McLennan were parties defendant. The entries in these logs were made from day to day while the vessel was proceeding from Vancouver south and while she was lying off the Farallones. A *prima facie* showing of conspiracy was certainly made by the Government. In such case the declarations of one conspirator with reference to acts in furtherance of the conspiracy are admissible against all. The declarations contained in these logs come within this rule. Thomas vs. U. S., 156 F. 897, 909–910.

Error is assigned on the refusal of the Court to permit Harris and Evelyn to testify that they did not believe their acts to be unlawful. At the request of these plaintiffs in error the Court charged: "The first and second mate are bound to obey the lawful orders of the master of the ship; the members of the crew are bound to obey the lawful orders of the captain of the ship, and they are bound likewise to obey the lawful orders of the first officer, or failing him on watch, the second officer. They are bound, Gentlemen, even to obey an unlawful order of the master and officers of the vessel unless they know that it is unlawful. Mere suspicion that the captain or the mates are telling them to do something that is contrary to the law is not sufficient; they are bound to obedience unless they know that

what they are doing is unlawful and therefore wrong." There is an inconsistency between the ruling on evidence and the charge given. We think the charge was more favorable to these plaintiffs in error than they were entitled to and that the testimony above referred to was properly excluded. The officers of a vessel carrying liquor and hovering off our coasts are chargeable with a knowledge of our laws. A party cannot escape criminal responsibility for his acts by entering into a contractual relation under which he obligates himself to obey the orders of a wrongdoer. These plaintiffs in error testified that they participated in the sacking of cased liquor and the delivery of it to motor-boats under orders from Captain Ford.

An exception was reserved to the refusal of the Court to permit Captain Howell of the "Shawnee" to be cross-examined with reference to the grounds on which he had been court-martialed. There was nothing in his direct examination bearing on this subject and the Court properly excluded the testimony other than his admission of the fact that he had been court-martialed.

After both sides had rested, the Court permitted the case to be reopened in order that the Government might introduce the following telegram purporting to be sent by the defendant Belanger:

"San Francisco, June 24/24.

"Geo. Norgan,
Room 1052 Biltmore Hotel,
Los Angeles, Calif.

"Merchandise not yet reached market. There-

fore cannot report anything different. Stop. Have appointment with Vince tomorrow who will make proposition in morning. Things shaping good. Regards.

C. H."

The Government contended that "merchandise" meant liquor and that "Vince" was the defendant Vincent Quartararo. Plaintiffs in error claim that there was an insufficient showing of the authenticity of the telegram.

There is no presumption that a telegram is sent by the party who purports to send it. Before it can be received in evidence there must be some proof connecting it with its alleged author. Drexel vs. True, 74 F. 12; Smith vs. Easton, 54 Md. 138, 145; Cobb vs. Glenn Boom Co., 57 W. Va. 49, 49 S. E. 1005, 1008; Burt vs. Winona Co., 31 Minn. 472, 18 N. W. 289. The necessary proof may consist of circumstantial evidence. Oregon Steamship Co. vs. Otis, 100 N. Y. 446, 3 N. E. 485. The original telegram in this case is typewritten. It appeared that it was received at the office of the Postal Telegraph Company at St. Francis Hotel, San Francisco, and that it was sent over the wires. The agent of the telegraph company took the name and address of the sender as "C. H. Belanger, Somerton Hotel." It appeared that Belanger was registered at the Somerton Hotel on the day when the wire was sent. This was as far as the Government went in authenticating the wire, but the defendant Belanger offered further proof. This proof did not deny the authenticity of the wire, but undertook to explain it as

relating to something other than the conspiracy charged. It appeared that Belanger had been in Los Angeles on Sunday, June 22, 1924, and in conference there with Norgan, to whom the telegram was addressed. Belanger left Los Angeles on the 22d or 23d of June for San Francisco. He called up the witness H. L. Williams at Los Angeles and told him he was going to communicate with Norgan. In reviewing the ruling of the Court receiving the telegram in evidence it is our duty to consider this evidence subsequently received. De Witt vs. U. S., 291 F. 995, 1002. We think that the circumstances were sufficient to constitute a *prima facie* authentication of the wire and that it was properly received.

Other telegrams, admittedly sent by Belanger, were also received. Their connection with the conspiracy is not shown, but their contents were not damaging and we think that this plaintiff in error was not prejudiced by their admission.

Plaintiffs in error excepted generally to the following portion of the charge:

"The indictment in effect charges that a certain corporation formed in a foreign country, to wit, the Dominion of Canada, entered into a plan by which liquor was to be shipped at sea ostensibly and under the provisions of her manifest for delivery in another foreign country, to wit, Mexico. It is charged that that was a mere cloak or blind and that the real intent and purpose of the shipping of the liquor by various vessels plying out of the harbor of Vancouver was to lie off the coast of the United States

and to land the liquor illegally and unlawfully upon our shores.

"It is then charged that in effect Captain Ford, the Chief Officer Mr. Harris, the Second Officer Mr. Evelyn, and members of the crew of the 'Quadra' loaded upon that vessel a large quantity of intoxicating liquor, the manifest providing that that liquor was for delivery at La Libertad; that it was the intent and purpose, however, for that ship to come as close as she dared to the Coast of California and to deliver that liquor by means of small boats plying from the ship to the shore in the State of California for distribution and sale to our citizens.

"It is charged that two persons residing, or at least one of them residing in the State of California and the other sojourning here, and other persons who are not brought before the Court, were the means or agency by which the scheme was to be carried out to its end. In other words, that they were to provide the vessels by which the liquor was brought from the ships to the shore, and to provide for its sale and distribution after it was landed on the coast of the State of California.

"Now, Gentlemen, if that be true then I instruct you that every person who in any manner participated in that scheme was guilty of the conspiracy as charged in the indictment."

The exception did not direct the Court's attention to the question of venue, nor did plaintiffs in error request any instruction on that subject. It is now contended that the Court directed the jury to convict if it found the defendants parties to a con-

spiracy formed in Canada whereas the charge in the indictment is a conspiracy formed at San Francisco Bay. We do not so read the instruction complained of. There is a reference to a corporation formed in Canada, but no reference to a conspiracy whose situs was in Canada. If the jury found the facts to be as outlined in the instruction it was their duty to convict those who participated in the scheme. The Court was not discussing the question of venue. When an instruction covers a single proposition of law a general exception to such instruction is sufficient; but when an exception is reserved to a considerable portion of the charge, the exception should be sufficiently specific to direct the attention of the trial court to the legal questions which it is desired to reserve. C. W. Young Co. vs. Union Oil Co., 293 F. 742. It is also to be said that it was clear for reasons already pointed out that if the defendants were guilty the District Court in which they were tried had jurisdiction of their offense. We find no error in the charge quoted.

It would unduly prolong this opinion to discuss other exceptions and assignments of error. They have all been considered and we find no error except that, in the opinion of the writer, the dollar bills should not have been admitted in evidence and the requested instruction removing them from the consideration of the jury should have been given.

The judgment is affirmed as to all plaintiffs in error, the writer dissenting as to Quartararo.

[Endorsed]: Opinion. Filed Jan. 4, 1926. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 4602.

GEORGE FORD, GEORGE HARRIS, and J. EVELYN,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

VINCENT QUARTARARO,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

CHARLES H. BELANGER,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

JUDGMENT U. S. CIRCUIT COURT OF APPEALS.

In Error to the District Court of the Southern Division of the United States for the Northern District of California, First Division.

This cause came on to be heard on the Transcript of the Record from the Southern Division of the District Court of the United States for the Northern District of California, First Division, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is affirmed.

[Endorsed]: Judgment. Filed and entered January 4, 1926. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

At a stated term, to wit, the October Term, A. D., 1925, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the eighth day of February, in the year of our Lord one thousand nine hundred and twenty-six. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable WILLIAM H. HUNT, Circuit Judge; Honorable FRANK H. RUDKIN, Circuit Judge.

No. 4602.

GEORGE FORD, GEORGE HARRIS, and J. EVELYN,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

VINCENT QUARTARARO,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

CHARLES H. BELANGER,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

ORDER DENYING PETITIONS FOR A REHEARING.

On consideration thereof, and by direction of the Honorable William B. Gilbert, William H. Hunt and Wallace McCamant, Circuit Judges, before whom the cause was heard, IT IS ORDERED that the petition, filed February 3, 1926, on behalf of plaintiffs in error Ford, Harris, Evelyn and Belanger, for a rehearing of the above-entitled cause be, and hereby is denied.

IT IS FURTHER ORDERED, by direction of the Honorable William B. Gilbert and William H. Hunt, Circuit Judges (Honorable Wallace McCamant, Circuit Judge, dissenting), that the petition, filed February 3, 1926, on behalf of plaintiff in error Quartararo for a rehearing of the above-entitled cause be, and hereby is denied.

At a stated term, to wit, the October Term, A. D. 1925, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Wednesday, the tenth day of February, in the year of our Lord one thousand nine hundred and twenty-six. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable WILLIAM H. HUNT, Circuit Judge; Honorable FRANK H. RUDKIN, Circuit Judge.

No. 4602.

GEORGE FORD, GEORGE HARRIS and J. EVELYN,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

VINCENT QUARTARARO,
Plaintiff in Error,
vs.
UNITED STATES OF AMERICA,
Defendant in Error.

CHARLES H. BELANGER,
Plaintiff in Error,
vs.
UNITED STATES OF AMERICA,
Defendant in Error.

ORDER STAYING ISSUANCE OF MANDATE, ETC.

Upon motion of Mr. Kenneth M. Green, counsel for the plaintiffs in error Ford, Harris, Evelyn and Belanger, and upon motion of Mr. Louis V. Crowley, counsel for plaintiff in error Quartararo, and good cause therefor appearing, ORDERED mandate of this court in the above-entitled cause stayed until after the Supreme Court of the United States passes upon the petition to be made on behalf of the plaintiffs in error for the issuance of a writ of certiorari herein, on condition that the said petition be docketed in the said Supreme Court on or before March 15, 1926.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 4602.

GEORGE FORD, GEORGE HARRIS and J. EVELYN,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

VINCENT QUARTARARO,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

CHARLES H. BELANGER,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

CERTIFICATE OF CLERK U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT TO RECORD CERTIFIED UNDER RULE 35 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, F. D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit,

do hereby certify the foregoing eight hundred and seventy-two (872) pages, numbered from and including 1 to and including 872, to be a full, true and correct copy of the entire record, excluding original exhibits, of the above-entitled cause in the said Circuit Court of Appeals, made pursuant to request of counsel for the plaintiffs in error and certified under Rule 35 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

ATTEST my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 16th day of February, A. D. 1926.

[Seal]

F. D. MONCKTON,
Clerk.

By Paul P. O'Brien,
Deputy Clerk.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 19, 1926

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.